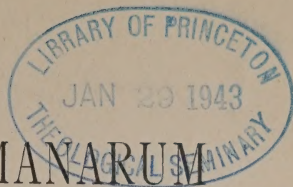


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MOSAICARUM ET ROMANARUM
LEGUM COLLATIO.

M. HYAMSON.

✓
*Mosaicarum et romanarum
legum collatio*



MOSAICARUM ET ROMANARUM LEGUM COLLATIO.

WITH
INTRODUCTION, FACSIMILE AND TRANSCRIPTION
OF THE BERLIN CODEX, TRANSLATION,
NOTES AND APPENDICES.

BY
REV. M. HYAMSON, LL.D., B.A.

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TO
MY WIFE.

PREFACE.

ROMAN Jurisprudence engages the attention of continental jurists to a greater extent than it does that of English lawyers, being of more practical interest to the former than to the latter. The Law of England, though it owes much indirectly to that of Rome, is not based on it as are the Laws of France and Germany. Still the ancient system is deserving of more study than it receives, if only as a magnificently developed system of thought, the product of a long succession of great minds.

For its proper understanding, however, one should begin at the beginning, with the remains of the Ante-Justinian juristic literature.

I commenced with the *Mosaicarum et Romanarum Legum Collatio*, because the title held out the prospect of an interesting comparison between two great systems. Closer inspection showed that this promise was illusory. Yet the problems of Age, Place, Authorship and Purpose, which occupied the minds of scholars from the sixteenth century onwards, deserve the attention of our own times. On these points I have not been content to repeat statements at second-hand. Wherever possible I have verified references, traced quotations to their sources, and carefully weighed the views of critics.

The facsimile of the Berlin MS. of the *Collatio*, the oldest and best of the three Codices, which is printed with a transcript, has enabled me to correct errors and supply deficiencies in Mommsen's *Apparatus of Variants*.

These I have arranged in columns, in order to help the reader to take in at a glance the salient features of each Codex and the marks by which it is distinguished from its fellows.

I have followed the latest text (Mommsen's) generally but not exclusively. The purpose I have kept in view in the Notes has been to furnish references to the parallels in Roman Jurisprudence, elucidations of difficulties and occasionally brief statements of Rabbinical views where these would be helpful in the interpretation of the text or the subject matter.

I trust that this effort will find appreciation and stimulate others to cultivate a field of enquiry that is full of interest, and the study of which will bring us into touch with the intellectual giants of the past.

In conclusion I take the opportunity of expressing my thanks to Krüger, the surviving editor, and to the firm of Weidmann, the publishers, for their courteous permission to make the fullest use of the Berlin edition (1890), of the Ante-Justinian Jurisprudence.

It is also a pleasure to me to acknowledge the care and attention which the Publishers and Printers and the Foreman of the Compositors' room have bestowed on the execution of what typographically must have been a difficult piece of work.

M. H.

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ESSAYS ON THE COLLATIO.

THE MANUSCRIPTS OF THE COLLATIO.

THE *Collatio Legum Mosaicarum et Romanarum* is not mentioned in the classical Literature of Roman Jurisprudence. The first references to it are made by Hincmar, Archbishop of Rheims, who died in 882. His works¹ are rich in excerpts from Roman Law, most of them taken from Alaric's Breviary, and Julian's Epitome of the Novels. What is unique in Hincmar is that he also quotes the *Collatio*. In his treatise *de diuortio Lotharii et Tetbergæ*, written about 860, he deals with the divorce of Lothar II., King of Lorraine, and Tetberga. The references to the *Collatio* are as follows: (Opp. T. 1, p. 627) "*Scriptum est in libro Leuitici; qui dormierit cum masculo coitu femineo, uterque operatus est nefas, morte moriantur; unde et leges Romanæ decernunt in capitulis de stupratoribus, quod legens quisque inueniet.*" The statement concerning the Chapters *de stupratoribus* in the *Leges Romanæ* refers to Title V., styled *de stupratoribus* in the *Collatio*. The concluding phrase, *quod legens quisque inueniet* shows that the *Collatio* must have been generally known to scholars. The second citation (*ibid*, p. 634), is more explicit. Hincmar complains that the Queen's brother had not been examined. He should have been summoned before the Court, and either the two parties who were accused of incest should both have been acquitted or both punished. *Veniat ille qui in sua libertate est, et legaliter aut quod ei impingitur defendens liberetur aut illis de quibus reputatur, quoniam non solum particeps, sed etiam auctor et executor criminis est, concredens legaliter puniatur, et aut in liberatione illius ista quæ in custodia est et propter timorem super se mendacium dicit, legaliter liberetur aut in punitione illius legaliter puniatur, sicut in primo libro legis Romanæ capitulo sexto de stupratoribus et in capitulo septimo de incestis et turpibus nuptiis præcipitur et in ceteris quæ Christiana iura depromunt, iusti iudices legere possunt.* It will be noticed that Hincmar quotes *de stupratoribus* as Chapter VI., and *de incestis et turpibus nuptiis* as Chapter VII.

¹ Hincmari Opp. ed. Sirmond. T. I and 2. Paris, 1645. Folio.

This is either a slip, or we may assume that Hincmar took Title I. *b* as a separate title; for in the extant manuscripts of the Collatio, *de stupratoribus* is Title V., and *de incestis nuptiis* is Title VI.¹ As these topics are not treated successively in this order in any other source, the *Lex Romana*, of which Hincmar speaks, undoubtedly designates a Codex of which the Collatio formed part; and since he speaks of these chapters as being in *primo libro legis Romanae*, the Collatio, it has been suggested, stood first in the Codex which he quotes.²

Jean Dutillet (Joannes Tilius Meldensis), Bishop of St. Brieuc, afterwards of Meaux (died 1570), visited, about 1544, the libraries of the North French Monasteries and found fragments of the Collatio which he attributed to Licinius Rufinus.³

He did not publish them for the same reason that he did not publish Ulpian till 1549, because the copies which came into his possession before that year, and some of which he saw at the same time as the Collatio, were imperfect.⁴ Dutillet's Fragments of the Collatio are now lost.

Three manuscript codices containing the Collatio are still extant. They are known as the Berlin, Vienna and Vercelli Codices. The Berlin Codex⁵ is assumed by all critics to be identical with the MS. found by Pierre Pithou,⁶ the first editor,

¹ Mommsen suggests that Hincmar's manuscript, like the Berlin Codex, had, before the title, *de stupratoribus*, the phrase: *expl. titulo quinto*.

² Savigny's view (see his *Geschichte des Roemischen Rechts im Mittelalter*, Bk. ii., pp. 280-283) is, that in Hincmar's *Lex Romana*, the Collatio stood first, followed possibly by Julian's Epitome, Alaric's Breviary and the Theodosian Code. His ground for assuming that Hincmar's Codex must have contained the Theodosian Code, separated from the Collatio by two books, is that Hincmar quotes the Fourth Book of the Theodosian Code as the Sixth: Opp. Tom. II., p. 501 *et item in libro sexto, titulo decimo nono, inter alia praecipitur: ut sententia, si sine scripto dicta fuerit, nec nomen sententiae habere mereatur*. This, apparently, is from the Theodosian Code, lib. iv., tit. 17. const. 1. Haenel has, however, shown (on the passage in his edition, pp. 414, 415), that Hincmar took it from Justinian's Code, (vii. 44, 3), and wrote Lib. vii., tit. xliiii. The "L" was turned by a scribe into "V." Mommsen (p. 112 of his edition, *Ante-Justiniani Iuris*, etc.), thinks that Hincmar's Codex contained the Collatio after Julian's Epitome, and that the words *primus liber* were at the beginning of the Collatio, as in the Vienna Codex: *Incipit liber primus*.

³ Pithou's first note (p. 66, ed. princeps; p. 109 in Heidelberg edition, Brit. Mus. 877 e. 4): *Inaudieram equidem antea fuisse ex priscis scriptoribus aliquem qui cum Moysis legibus Romanas contulisset; ac memini Jo. Tilium antiquae eruditionis hominem, cum de ueterum iuriconsultorum reliquiis sermo esset, narrare solitum habuisse aliquando se eius operis fragmenta pauca quibus ille Licinnii Rufini nomen tribuebat*.

⁴ Cp. Hugo's *Gelehrten-geschichte*, 3rd edition, pp. 229, 230; and his *Index Editionum Pontium*, etc., pp. 135, 136.

⁵ Berlin Royal Library, No. 269.

⁶ Haenel, in the preface to his edition of Julian's Epitome (pp. iv. and v.), doubts whether this was the only MS. used by Pithou for his edition of the Collatio.

who states that he took the MS. in 1570 from an ancient library of the Sequani, or rather Mandubii, in which it had been concealed for more than 80 years. (Probably he meant 800 years).¹

From this MS. he edited the whole work in 1572.² Before doing so, he communicated his discovery to his fellow-workers and friends, Charondas, Contius, Cujas, Scaliger, by each of whom it was utilised.

Ludovicus Charondas published at Antwerp, in 1575, an edition of the Digest. In a préface, dated Paris, 1st January, 1572, he quotes from the *Collatio Romanorum cum Moysis Legibus* which, he says, he found in a *Codex Bibliothecae Dionysianae*, i.e., in the library of the Abbey of St. Denys. The text of the quotation, Title I., chap. 11, is identical with that in Pithou's MS., as the *Varia Lectio*, given in the margin clearly shows.³

Antonius Contius' edition of his *Lectiones Subsecivae*, published 1573,⁴ has, on page 74, as Chapter ix., an excerpt—frag-

¹ Pithou's Edition of the *Collatio*, prefatory note on i. 1, *Illud affirmare liquet quae nunc damus ex antiquissima Sequanorum aut Mandubiorum potius bibliotheca in qua per annos octoginta* (in the Heidelberg edition octingentos) *et amplius latuerunt.*

² The Dedication is dated Lutetiae Parisiorum Kalend. Octobr., 1572.

³ The passage in the Preface of Charondas' Digest is as follows: *Unum referam locum ex libro qui Licinii Rufini esse creditur, de collatione legum Romanarum cum Moysis legibus, quem habeo manuscriptum ex bibliotheca Dionysiana: illius fragmentum unum legitur in cap. 4 D. ad legem Corneliam de sicariis et alterum in cap. 5 in fine D. de poenis. Ideo uero locum illum referre statui, quia multum pertinet ad explicandam aequitatis rationem, et quam delictis puniendis moderationem adhibere oporteat, ostendit, in quo praecipua vis legis consistit; ut eleganter in illius definitione Papinianus exprimit. Sic igitur in eo libro legitur. Ulpianus libro et titulo quo supra. Cum quidam per lasciviam . . . Vellem (in margin, Deest aliquid in libro manuscripto Rufini, nempe, rescribas, uel aliud simile . . . nec cupiditatis culpam (in margin, Fortè legèdum cupiditatem culpae) et sane in omnibus criminibus distinctio hęc poenarum aut iustitiam (in the margin, ex hoc loco emendanda est l. 5 in fin. D. de poenis, et pro poenam iustam, legèdum, poenarum iustitiam). Charondas also quotes a correction from Pithou's *Collatio*. In his edition of Justinian's Code. IV., 34, 1, 10, on *Idem AA. et CC. Septimiae*, he has, in margin, Note K, *Septimiae. In fragmentis Pithoei*, idem A. & CC. vii. et quadrat: *emendat Pithoeus recte Septimio et Quadrato, nã in quib, vet. exdp. hic legitur, Septimo.* Also in Justinian's Code, vi, 65, 1, on the Inscription *Imp. Antoninus A. Agrippino*, he has in margin: *In fragmentis Pithoei Julio Agrippino*, and at the end of this Constitution, he has in the margin Prop. iiiii., *Non. nou. Antonino III. Cons. Hanc subscriptionem reperi in fragmentis Pithoei tit. x, ex quodam Pauli responso, qui hanc constitutionem declarare respondit his qui horrea locant maiorẽ uim imputari non posse.**

The date of Charondas' edition of the *Corpus Juris Civilis* is 1575. There are no further references to the *Collatio*.

⁴ *Antonii Contii iurisconsulti lectionum subseciviarum iuris civilis liber primus ab auctore denuo recognitus atque auctus Aurelianus ex officina Eligii Gibierii.* 1573. (Mommсен's edition of the *Collatio in the Collectio Librorum iuris ante-Justinianae*, Tom. iii., p. 110. note 2.) Blume's *Prolegomena to the Lex Dei*, xvi., note 5, also quotes the passage from A. Contii *subseciviarum lectionum*, Lib. I., c. 9 (inter opera Contii, Paris, a. 1616 edita, pp. 35, 36). *Mox idem edictum, longe integrius cum*

mentum ex integro Pauli libro singulari sub titulo quemadmodum iniuriarum agendum sit—which, the author says, was communicated by friends, and never before printed. The readings are those peculiar to Pithou's Codex, e.g. *aget* instead of *agit* (II.6.1.); *mola* instead of *mala* (II.6.4.); Numedius Nigidius instead of Numerius Negidius (II.6.5.).¹ This chapter is not found in the first edition of the *Lectiones Subsecivae* published at Leyden, 1555. Still, the whole of the MS. was probably not examined by him, as the fragments of the XII. Tables, published by him in 1572, omit the passages in the Collatio, tit. xvi., chap. 4.

Cujas had the MS. in his hands.² A printed copy of the Collatio in the Public Library at Berne contains his annotations, obviously founded on Pithou's MS., as some of his additions to, or variations from, Pithou's edition are identical with those found in that Codex.³

Pauli continua et sincera interpretatione subiiciam, ex fragmento nobis ab amicis communicato, nec unquam antea typis edito . . . fragmentum ex integro Pauli libro singulari sub titulo: Quemadmodum iniuriarum agendum sit. The fragment is identical with Title II., c. 6 of the Collatio. As the first edition published at Leyden in 1555 has not this passage (Mommsen, p. 110, note 2), Blume is probably wrong when he says (*Prolegomena* p. xvi.), *Id uerum mihi persuasum ab hoc Tiliano codice etiam eum locum manasse quem Ant. Contiis publicauit, quem ex integro Pauli libro desumptum esse putabat.*

¹ Mommsen's edition of the *Collatio* as above cited, p. 110, note 2.

² Cujas' Letters to Pithou, Codex Paris, Dupuy, 700. Excerpts made by Savigny are quoted by Blume in the Preface to his edition, p. vi. P. F. Girard, at Mommsen's request, re-examined these Letters. Cujas first mentions the Collatio in a letter dated 17th October, 1570, in which he writes to Pithou asking for a loan of the manuscript, and speaks of it as a new discovery: "*Apportés nous le Licinius et le XVI. Cod. Theod.*" In the same year, apparently, when he received an Apograph of the Collatio, "*il auroit besoin d'une autre copie, qui se pourra encore trouver à mon avis. J'ai des gens en trois lieux, qui cherchent. En ce lieu des XII. tables, qui parle de agnatis et gentilibus, je l'ye. Si agnatus nec escit, gentilis familiam habeto. Haec nunc gentilitia jura in usu non sunt. J'en ai corrigé plusieurs autres et en corrigerois bien d'avantage, si j'avois l'original comme je desire bien fort le tenir quelques jours. Et l'aiant tenu et reçu, vous pourrés puis après le publier ainsi que vous devisés par votre lettre.*"

Ce qui est avec le Rufinus est très bon, et la collection de tutoribus me plaît fort, etc.

1570. 15 Novemb. *Verba consultationis et rescripti ita se habent. Inter . . . majoribus, etc. Je trouve bon ce lieu—c'est un ancien jeu.*

1571. 20 Januar. "*Je desire bien fort de voir l'original de votre tant bon Rufinus.*"

1573. 11 April. "*Je n'ay encore reçu votre legem Dei que vous avez fait imprimer.*"

Blume's *Prolegomena*, pp. vi. and vii. Bonn, 1833.

³ Blume, *Prolegomena* to the *Lex Dei*, as cited above, p. xix., e.g. *usque ad quartum*, title vi. chap. 2. §. 2; *non possumus* (instead of *possumus*), title vi. chap. 3. §. 1; *ex lege*, title xvi. chap. 2. § 12.

SCALIGER'S APOGRAPH.

In the Public Library of the Leyden University, there is a manuscript numbered 61, and inscribed *ex legato illustris uiri Josephi Scaligeri*.¹

Folios 105–123*a*. contain the Collatio; this Apograph, Blume tells us,² was first used by Dorville, then by Florentius Petrus Pittenius, Matthias Roever, Hermann Cannegieter, Haenel and Puggaeus. Dorville annotated a copy of Pierre Pithou's first edition of the Collatio, and, where Scaliger's Apograph differs from Pithou's text, inserted the variants from the Apograph on the margin of Pithou's edition. He apparently also added some conjectures of his own. This annotated copy is now, together with the rest of Dorville's books, in the Bodleian Library at Oxford.³

Schulting, in his edition of the Ante-Justinian Jurisprudence, used Pittenius' comparison of the printed edition with Scaliger's Apograph,⁴ and gives various readings from it.⁵

Roever and Cannegieter have quoted passages from the Apograph; the former in a critical study of some corrupt portions of the Civil Law,⁶ the latter in his commentary on the Collatio.

Haenel and Puggaeus examined the Apograph and sent their notes to Blume.⁷ It is not quite certain whether Scaliger copied

¹ Cod. Lugdun.; Scal. No. 61. *Cp.* Catalog. Lugduno-Batavae, ed. 1716, p. 342.

² Blume's *Proleg. to Lex Dei*, xxiii., note 1.

³ Blume gives the number in the Bodleian Catalogue as x., 2. 2, 13. The present reference is "*Fragmenta quaedam Papiniani aliorumque ueterum iuris auctorum* (Paris, 1573), with manuscript notes and collations. D'Orville, 334."

⁴ Scaliger in the Preface to his *Jurisprudentia uetus ante-Justiniana, editio noua*, 1737, *Lipsiae*. *Paululum etiam profuere mihi lectionum uarietates ex apographo uiri Maximi, Josephi Scaligeri, quod in publica Academiae huius bibliotheca asseruatur, quodque cum Leidensi exemplari accurate contulit quondam, dum hic studiorum causa ageret, Florentius Petrus Pittenius, etc.* Vonck also used Pittenius' comparison, as well as the Apograph itself. See his *Specimen crit. in uarios auctores*, 1744, p. 37 seq., in the chapter headed *Conjectanea in Collat. Leg. Mosaic.*

⁵ Schulting's edition of the *Iurisprudentia ante-Justiniana*, pp. 940 and 941, headed: *Variae Lectiones in Mosaicarum et Romanorum Legum Collatione, Praecipue ex codice manuscripto Josephi Scaligeri, quem denotant haec litterae C. S. nonnullae ex Parisiensi editione.*

⁶ Roeveri, Matthiae, *Specimen iuridicum inaugurale ad loca quaedam iuris civilis deprauata*, Lugd. Bat., 1739, and also in Oelrich's *Thesaurus I.*, I. pp. 137–192. In chap. xii., p. 179, where he discusses the *Edictum Diocletiani et Maximiani de Manichaeis*, he quotes the apograph. "*Porro sed Dii immortales prouidentia sua ordinare; apographo Josephi Scaligeri, extat: sed Dii immortales prudentia sua.*" Chap. xiii. is headed *Mosaicarum et Romanarum L. L. Collatio plurimis in locis emendatur ex codice Josephi Scaligeri.*

⁷ Blume's *Proleg. Lex Dei*, xxiv.

Pithou's or another manuscript. Zimmern¹ thinks that the original text was the Codex of the St. Denys' Library, referred to by Charondas. Blume is positive that Scaliger copied Pithou's manuscript. He relies first on the frequent correspondence of the notes in Cujas copy in the Berne Library with those in Scaliger's Apograph. A stronger argument is furnished by the text: almost everything which is absent from Pithou's edition and found in either the Vercelli or Vienna Manuscripts is also wanting in Scaliger's Apograph. Furthermore, in Pithou's edition, as in Scaliger's Apograph, Justinian's Novel 138 follows the Collatio and Julian's Novels precede it.

All this cumulative evidence points to Pithou's manuscript having been the original from which Scaliger made his Apograph. The difference between Zimmern and Blume may be reconciled if we assume with Mommsen² that Pithou's Codex, stated by him to have come *ex antiquissima Sequanorum aut Mandubiorum Bibliotheca*, is really identical with the one Charondas used, and which, he said, came from the *Bibliotheca Dionysiana*, i.e., from the monastery of St. Denys near Paris.

With 1576 all further mention of the manuscript ceases. It is not named in Boivin's catalogue of Pithou's Library;³ nor is it to be found in the collections of Paris, Troyes and Montpellier where other portions of Pithou's library have gone.

In 1822, two manuscripts of the Collatio were re-discovered at Vienna and Vercelli, the former by Lancizolle, the latter by Blume.⁵ Blume used them in his edition of 1833. At the auction of the Rosny Library, in 1837, many of Rosanbo's Manuscripts were sold, and amongst these was found the long lost Pithou Codex containing the Collatio. It was bought for the Royal Library at Berlin where it is now deposited.⁶

¹ Zimmern, *Geschichte des röm. Privatrechts*. Tom. i., § 7, not. 23. Quoted by Blume, *l.c.* xvii.

² Mommsen's Edition of the Collatio in the Ante-Justin. Juris. Tom. III., p. 109.

³ *Dissertation historique touchant la bibliothèque de P. Pithou*, at the end of the Life of Pithou by same writer, 1st edition, Paris, 1711. 2nd edition, with very few alterations, Paris, 1716. Finally, in epitome, in "Thou's History of His Own Times," edited by Buckley, London, 1733, Tom. vii., num. xi. p. 1-17. Also Grosley's *Vie de P. Pithou*, Tom. II., pp. 225 seq. (Blume, *Prolegomena* xxi., footnote 16). See also Haenel's Edition of Julian's Epitome, Preface, p. iv.

⁴ Blume's *Prolegomena* xix.-xxi.

⁵ *Ibidem*, xxviii.

⁶ Haenel's Preface to his edition of Julian's Epitome, p. iv.

THE BERLIN MANUSCRIPT.¹

The Manuscript is on parchment and consists of 202 large quarto folios, written by more than one hand. Each page contains at least 25, sometimes 30, and occasionally even 35 lines. On some of the pages the damp has rendered a portion of the first three lines wholly, or in part illegible. This is especially noticeable in the folios 157-169, which contain portions of the Collatio. The Codex was, from the first, a complete work, as is evident from the index of 731 chapters prefixed to it, and in accordance with which the paragraphs are continuously numbered. Folios 183 to 190 are not indexed as they are an interpolation.

The Berlin Codex contains:—

- | | | |
|--|-----|--|
| 1. Folio 1a ... | ... | Six lines of theological matter. |
| 2. Folio 1b till 17a,
line 10. | { | Index of Julian's Epitome of the Novels. |
| 3. Folio 17a, l. 11 till
19a, l. 17 ... | { | Index of the <i>Lex Dei</i> ; the rest of Folio 19 is blank. |
| 4. Folio 20a till 149b | | Julian's Epitome. |
| 5. (a) Folio 149b | { | Epitome of Novel 134, <i>de Vicariis</i> (Haenel's Edition of Julian, p. 192). |
| (b) Folio 151 ... | { | Novel 34, <i>ut nulli liceat mutuanti</i> (Haenel l.c. appendix, p. 160.*) |
| (c) Folio 152b ... | { | Summary of Novel 65, <i>de terris uel Domibus</i> (edited by Cujas, with commentary, <i>opp. ed. Neapol.</i> , vol. II., p. 1109. Pithou edited this novel in full, with the Collatio, in the edition of 1573 (p. 57). |
| (d) Folio 153a ... | { | Novel 114, <i>de sacris diuinis subscriptionibus</i> , |
| (e) Folio 153b ... | { | Novel 143 till 150, <i>de raptu mulierum et sponsatae</i> . |
| (f) Folio 155a ... | { | Novel 138, <i>de Usuris supraduplum non computandis</i> , (Haenel's Julian, p. 197). Pithou edited it from the Berlin Codex, with the Collatio, in the Edition of 1573, p. 55. |

¹ Formerly *Acces. Lat.* 877, now *MS. Lat.*, fol. 269. Described by Haenel in the Preface to his edition of Julian's Epitome, iv-vi.; by Blume in *Zeitschrift für geschichtliche Rechtswissenschaft*, vol. x. (1842), p. 292 seq.; by Mommsen in the Preface to his edition of the Collatio, pp. 109 and 110.

Berlin Codex—(cont.)

- | | | |
|--|---|---|
| (g) Folio 155b ... | { | Summary of Novel 121, <i>de par-</i>
<i>tiariis solutionibus</i> . (Haenel's
Julian, p. 197. Pithou's edition,
1573, p. 56.) |
| 6. Folio 155b, and be-
ginning of 156a,
which contains
only 7 lines ... | | Commencement of <i>de consiliariis</i>
<i>domini Juliani antecessoris</i>
<i>dictatum</i> till <i>qua emerserit</i>
<i>relatas</i> (Pithou, l.c., p. 59;
Haenel, l.c., p. 198). |
| 7. Folio 156b ... | | Blank. |
| Folio 157a ... | | Blank. |
| 8. Folio 157b till Middle
of 182b ... | { | The Collatio with the inscription
Incip. Lex Di, and consisting
of chaps. 592-732. |
| 9. Folio 183a till 190b | | The conclusion of Justinian's
Institutes (iv., 18, § 5 till end),
and beginning of Digest till
i. 7, l. 3. |
| 10. Folio 191a ... | | Conclusion of the <i>Lex Dei</i> . |
| 11. Folio 191a, l. 15 till
Folio 194a, l. 16 | { | Conclusion of the <i>dictatum de</i>
<i>consiliariis</i> , followed without
a break by <i>Collatio domini</i>
<i>Juliani de contutoribus</i> (Pithou,
l.c. p. 63; Haenel, l.c. p. 201). |
| 12. Folio 194a, l. 17-
till 199b ... | | Novel 134 (version as in the
<i>Authent. ed.</i> Heimbach, p. 127). |
| 13. Folio 199b, l. 20 ... | { | Novel 117, <i>De diuersis capitibus</i>
<i>et solutione matrimonii</i> , pre-
face and ch. 1 and 2; (version
as given in <i>Authent. ed.</i>
Heimbach, p. 112). |
| 14. Folio 200b, l. 8—
202a, l. 21, which
ends the Codex. | | <i>Passio Sci Gorgonii Martiris</i> , till
the words <i>colligendi canes et</i>
<i>lupi</i> . |

There are various opinions as to the age of the Codex. Pithou ascribed the entire manuscript to the 8th century¹; Blume² to the

¹ See Note next page.

² Blume, *Zeitsch. für Geschichtl. Rechtsw.* Vol. x., p. 302.

9th or 10th; Huschke to the 8th or 9th¹; Mommsen to the earlier rather than the latter part of the 9th century.² The orthography, would incline one to place it at the end of the 9th or beginning of the 10th century.³

THE VIENNA CODEX.⁴

The Vienna Manuscript No. 2160 was brought in 1822 from Salzburg to the Imperial Library of Austria, and accordingly was formerly styled the Salzburg Codex No. CCCLX. It was written by various hands, and belongs to the end of the 10th or beginning of the 11th century.⁵ It consists of 184 folios, the Collatio being written on the folios 162*b*–183*b*. Each page has 31 lines. The beginnings of titles and chapters are written in red or other distinctive colour. There are few abbreviations. Almost the only ones that occur are the following:—

- | | |
|------------------|---------------------------|
| 1. p = per. | 6. ʒ = us. |
| 2. p = pro. | 7. ʃ = ur. |
| 3. p̄ = prae. | 8. { } = est. |
| 4. qd = quod. | 9. ε = ae, e. |
| 5. ʒ = m, n, ut. | 10. ! = punctuation mark. |

The abbreviations marked 1, 2, 3, 7, 8, are also found in the Berlin Codex. In both codices, the letter I is unpointed. A frequent error is the use of accusative for the nominative or ablative. This is also a feature in the Berlin Codex. Pithou, in his edition, note 1, states that he altered 600 accusatives into other cases. *Vel* is frequently written for *ue*. The copyist follows the usual older spelling in words like *prouintia*.

The Vienna Codex contains:—

1. Epitome of the novels.
2. Justinian's novel 34,⁶ now incomplete.

¹ Huschke, in the Preface to his edition of the Collatio, *existimatur saec. octauū uel nonū*. The former date would correspond with Pithou's statement about the MS. *per annos octingentos et amplius, etc.....latuerunt*.

² Mommsen, Preface to his edition of the Collatio, p. 109.

³ See Haenel in the Preface to his edition of Julian, p. iv. *Orthographia singularis est concinnit autem in uniuersum cum ea quae reperitur in codicibus exeunto saeculo IX. et primis saeculi X. lustris in Curiensi Rhaetia aut in Italia superiori scriptis, quare ego codicem eiusdem aetatis atque patriae esse arbitror*.

⁴ The Vienna MS. is described in Blume, *Proleg. Lex Dei*, xxvii.-xxviii.; by Haenel, Julian's Epitome, vi. and vii.; and by Biener, *Zeitsch. f. Gesch. R.W.*, vol. v., 1825, p. 238 seqq.

⁵ Mommsen in his Collatio, p. 111, gives the former century; Blume, *Proleg. Lex Dei*, xxvii., has *saeculo undecimo*; and so it is dated in the Catalogue of MSS. in the Imperial Library of Vienna.

⁶ The penultimate leaf of Quaternion XVIII. is torn out; it contained the end of Novel 34, the beginning of Novel 114 and the whole of Novel 65. The index shows that the last was in the Codex.

3. Epitome of Novel 65, now wanting.
4. Novels 114, now incomplete, 143, 138.
5. Epitome of Novel 121.
6. *Dictatum de consiliariis*.¹
7. *Collectio de tutoribus*.
8. Novel 134 (with the beginning *Quam iam uideor*).
Preface and first two chapters of Novel 117.
9. A treatise of 15 pages on Julian's Epitome, not yet printed, beginning "*Primum et secundum capitulum non solum innouat anteriores leges sed etiam confirmat*."²
10. Justinian's Constitution, hitherto unknown, *pro debitoribus in Italia et Sicilia*, beginning *Cum semper decursio*.³
11. fr. 12 Digest, *de testibus* (xxii. 5).
12. A passage of uncertain origin *de cecis et debilibus*. It begins *Claudi et ceci et debiles pro furtius causa cum ad iudicium steterunt* and ends *usque dum manifestare studeant huius rei notitiam*.⁴

Then follows the Collatio, *Incipit legem dei*, etc. Two chapters and a half are wanting at the end of Title XVI.

THE VERCELLI CODEX.

This Manuscript, preserved in the library of the Chapter of Vercelli, and numbered CXXII., is a large quarto of 183 folios, written in double columns, each containing 29 lines. Julian's Novel 61 forms the exception, being written in single columns. There are no numbers or catchwords to the pages or quaternions. The original first quaternion is lost. The one at present in the Codex is by the same hand, but consists of foreign matter, and has 30 lines on each page. The upper margins of the last folios are damaged by damp. The rest of the Codex is almost intact. Blume, in his edition of the Collatio, gives specimens of the Manuscript, which seems to have been written by the same scribe at different periods. The Collatio from Title VI., Chapter 4, paragraph 1, *commissa sunt* is at the end of the Codex, and is preceded by the sentence *Ambrosius iudex hunc legem scripsi in hoc libro*. This sentence, according to Blume, belongs to the

¹ See Biener, *Zeitschrift für geschicht. R.W.*, pp. 341-344.

² *Ibid.*, 345-352.

³ *Ibid.*, 352-355.

⁴ *Ibid.*, 355-357.

10th or the beginning of the 11th century,¹ and fixes the date of the Codex. Abbreviations and capital letters are rare.

In place of the first quaternion,² now perished, which contained an index of the rubrics to Julian, up to Chapter CCX., there are seven folios which begin :

*Incip. nom. regionum.
et ciuitatem in quibus.
scorum apostolorum.
corpora requiescant.
Inc. Johannis Baptista filius.*

A little later there follows :—

*Incipit Expositio.
IIII Euangl.*

Under this title are given matters relating to theology and jurisprudence. Then comes the proem to Justinian's Institutes.

The second quaternion,³ beginning folio 8, contains an index of Julian's Novels, beginning Kp. CCXI. *De Abscentibus reis* till Kp. DXCII. (*sic*) *De Episcopis et monachis*. This is followed (folio 13b) by an index of the chapters of the *Lex Dei* beginning *Incipit Kapitula legis, quod praecepit Deus ad Moysen*. Then from folio 14b, Julian's Epitome begins, till Constitution CXXIV. ch. 564. The Epitome is introduced as follows: *Incipit constitutio prima nouellarum Justiniani p.p. aug. de Greco in Latino translata. Per Julianum uirum eloquentissimum antecessorem ciuitate Constantinopolitana cons. prima.*

Then from folio 150b,—the Appendix to Julian (The Constitution *quam iam uideor*), up to Constitution CXXXIII. Chap. 596, viz.:

1. Justinian's Novel 34.
2. Epitome of Novel 65.
3. Novel 114.
4. „ 143.
5. „ 138.
6. Epitome of Novel 121.
7. Julian's *Dictatum de consiliariis* to the words *lege iterum Nouellas duas constitutiones circa centesima decima relatas.*

¹ Blume on the *Leg. Langobardorum*, p. xxi., *apud* Haenel's Julian's Epitome, p. viii., note 12. *Ambrosium iudicem ciuitatis Mediolanensis et aduocatam monasterii S. Ambrosii habemus anno 892 in Fumagalli codice diplomatico*, pp. 520, 522.

² Haenel's Edition of Julian's Epitome, p. 85.

³ *l. c.*, p. 85.

- 8a. Lex IIII. DXCIII. Con.=Cod. Just. V. 71, 4. Idem AA.
 stitutio Metridiati. Pupil- Mithridati. Non solum
 lis uel adultis res suas nec per uenditionem rustica
 uindi nec donari uel com- praedia uel suburbana
 mutari licet nec cum fratro pupilli uel adulescentes
 suo. alienare prohibentur, sed
 neque transactionis ratione
 neque permutatione et
 multo magis donatione nec
 alio quoquo modo ea trans-
 ferre e dominio suo
 possunt. igitur et tu si
 fratribus tuis per transac-
 tionem fundum dedisti *cet.*
- b. DXCIIII. lex I. Imp.=Cod. Just. V. 71, 1. Imp.
 Antonino A. Muciano. Antoninus A. Muciano.
 Minor quod absque tutore Venditio quidem praedii,
 uel curatore uindedit uel quod iure pignoris
 obligauit, dum ad legiti- distractum est, ad senatus
 mam etatem uenerit, resti- consultum, quod de alien-
 tuitur illi. andis praediis pupillorum
 ue adulescentium
 factum est, non pertinet.
 sed si etiam nunc in ea
 aetate es, cui subueniri
 solet, aditus competens
 iudex, an te in integrum
 restituere debeat
 dispiciet.
- c. DXCV. De donatione.=Cod. Theod. VIII. 12, 1, *ad*
 Donatio directa est, ubi in *summam Aegidianiam*
 presenti res dona (*scr. dona-* (breuiar. p. 156, Haenel).
 ata) traditur. quod si dona-
 tor quartam sibi non reser-
 uaberit, donatio non ualebit.
- d. DXCVI. Si seruus sciente=Coll. XIV., 2, 3.
 domino alienum seruum
 substraxerit uindiderit ce-
 lauerit, in ipsum dominum
 animaduertitur, quod si id
 dominum ignorante com-
 miserit, in metallum datur.

9. A glossary which begins :

seua | *crude prestolatur expectetur avidus* | *cupidus*
and ends :

sciscitantes | *interrogantes.*

Julian's collection and its appendices are followed by a treatise *De Incestis* belonging to Moral Theology rather than to Jurisprudence. This is succeeded by a table of grades of cognation. A later hand has added Rotharith's Law CLIII. and the words *Omnis parentela . . . quomodo nos dicimus, ambrosius iudex hunc lege scrisi in hoc libro.* At the back of the folio containing Ambrosius' note, 157 b, begins the Collatio. It fills 24½ folios and ends with Title XVI., Chapter 3, § 13. The last word is *pertineri*. Then come notes on Jurisprudence and Ethics. The Codex concludes with the text from the Book of Proverbs : *Melius est uocare ad holera cum caritate quā ad uitulū faginatū cū odio.*

There are also several notes written on the margin and between the lines of the text.

The following are inserted in the Collatio :—

1. Title I., chap. 7, on the margin at the foot of the page (Cod. Just. IX. 16., 6.):

Imp̄r. Justin̄. A. si quis cū telo ambulauerit hominis negandi causa, sicut his qui hominē occiderit pena subiacet.

2. Title II., chap. 5, on the upper margin above the page (= Pseudo-Eleutherius, Vol. I., p. 696, Mansi):

Judici non est sine accusatore dampnare, quia et dn̄s Judas, cū fur esset, quia non est accusatus minime abiecit.

3. Title IV., chap. 2, on the upper margin :

* [Omnia ergo que] aduersus absentes in omni negotio aut loco aguntur [aut iudicantur, om]nino Vacue(n)tur quoniam absentem nullus addicit nec ulla lex dampnat. facile ergo homo hominem [fallere potest non] tamen deum cuius oculis omnia nuda sunt et aperta. Unde ait propheta : dominus nouit cogitationes hominum quoniam uane sunt.

* Huelsen examined the Codex for Mommsen and reported that what is included in brackets is almost faded. (Mommsen, l.c., p. 111).

On the lower margin :

*Kp. Clerici qui in quacunque seditione arma uolentes
sumpserint, reperti amisso ordinis sui gradu in
monasterio paenitentia retrudantur.*

4. Title XII., chap. 1. :

Fabor | S(cilicet) laus uel auxilio.

5. Title XIV., chap. 1. :

*In Terptatio [= interpretatio] Plagiarius est, qui hominē
liberū rapit et uendit.*

6. Title XIV., Chap. 2 :

After the words *item pronepotes*, when the Codex begins chapter CXXVIII., occurs the direction inserted in the text: *require post capitulum CXXX^{mo} IIII^o* (which is the last in the book) *capitulum C^{um} XXXV.* The reason is the dropping out of the passage XVI.2.8 *si ex duobus* till XVI.2.10 *matrem eandem habuerint item.* It was at the end of the text which the copyist used, but he forgot to transfer it.*

There are many points of similarity between the Vienna and Vercelli Codices.

1. The number of folios. The Vienna has 184; the Vercelli 183.
2. Both Codices are large quarto.
3. There are double columns.
4. Julian's Epitome is divided into two parts.
5. The numbering of the Constitutions in both is often wrong.
6. Each contains an Index to the Rubrics of Julian.
7. Both have Interlinear and marginal annotations, and
8. An Appendix to the Epitome.

* In addition to the Three Codices, a fragment of the Collatio, Title I., chap. 7, introduced with the prescription *de homicidio qui aliquando absoluuntur aliquando damnantur. Iustinianus Rex* is found in a MS. collection of canons written in the 11th century in Upper Italy (Vallicelliano B. ii.; Vatican, n. xiii. 39; and Monte Casino, n. ii., 16). The Codex Bellouacensis (Beauvais), now in the Paris Library, n. 9652, formerly *suppl. Lat.*, 779, belonging to the ninth century (Haenel, preface to the Post-Theodosian Novels, p. 14), has, on the last folio (p. 164), after a paragraph of Alaric's Breviary, the beginning of Collatio Title X., with the superscription *x. de deposito*.

9. The numbering of the chapters in Julian's Epitome and in the *Lex Dei* is continuous.
10. The orthography and abbreviations are alike.
11. They both belong to the same century, though the Vienna Codex is later.
12. The same subscriptions are sometimes missing in both.

Some items are peculiar to the Vercelli MS., *e.g.*:—

1. The subscriptions to the Constitutions 85, 86, 89, 90, 92, 101, 102, 119.
2. Chap. XI., Decrees of the Pope Gelasius.
3. Some chapters of the acts of the Fourth Council of Toledo and the acts of the Fourth Council of Carthage.

The Collatio and the other elements common to the Berlin, Vienna and Vercelli Codices render it highly probable that they all emanate from one and the same source.¹ The probability is raised to a certainty on a comparison of the Collatio in the three Manuscripts.

The Collatio is more complete in the Vienna than in the Vercelli Codex, and most complete in the Berlin Manuscript, though the last lacks words which are to be found in the other Codices. Certain lines, however, sometimes up to the same word, are missing in all three copies. The conclusion of the Collatio is obviously defective in the Vienna and Vercelli Manuscripts. Whether even the Berlin Codex, which is fuller, presents the Collatio in its entirety is doubtful. A point of difference is the Chapters. The Titles are fairly uniform. But the divisions into chapters, as well as the number and beginning of each chapter were apparently determined by each scribe, arbitrarily and without any fixed principle. Thus, in the Berlin Codex, *idem* in the middle of a sentence, Title XII., Chap. 7, § 8, afforded the copyist ground for beginning a new chapter. So also in Title XVI., Chap. 3 § 3 starts a new chapter because of the word *continuatur*. In the Vercelli Manuscript, Title XI., Chap. 8, § 1, begins a new chapter on account of the phrase *et cetera* which the scribe wrote for *et ceterum*.

¹ Mommsen (*l. c.*, p. 114) thinks that the Vienna Codex is nearest the Archetype.

With such carelessness on the part of the scribes, there is no cause for wonder that the Chapters do not coincide.¹

OF THE EDITIONS OF THE COLLATIO BEFORE BLUME.

Blume notes 20 Editions of the Collatio before his appeared in 1833. The text of the Collatio has been edited separately three times, viz. in 1573, in 1574 and in 1656: about a dozen times together with other sources of Roman Law; viz. with the Theodosian Code and other portions of the Ante-Justinian Jurisprudence in 1586, 1593, 1607, 1815; with the Ante-Justinian Jurisprudence in 1672, 1717, 1737, 1744; with Ulpian in 1768; with Julian, among Pithou's observations to the Code and Novels in 1689. The earliest in this class is Stephanus' Edition in his *Juris Civilis Fontes an Rini*, which, however, omits other works now included in sources of Roman Law. Five times the Collatio has been edited together with works on sacred subjects, viz., with the *Lex Moralis*

¹ Blume, who compared the Vienna and Vercelli Codices, gives the following comparative tables of Chapters for the Collatio:—

VIENNA.	VERCELLI.	VIENNA.	VERCELLI.
Chapters.	Chapters.	Chapters.	Chapters.
1 — 13	1 — 14	103 — 113	109 — 118
14 — 27	15 — 29	114 — (115)	119
28 — 33	30 — 36	116 — 119	120 — 124
34	37 — 38	120 — 124	125 — 128
35 — 51	39 — 56	125 — 126	129
52 — 66	57 — 72	127	130 — 134
67 — 89	73 — 96	128 — 132	wanting.
90 — 102	97 — 108		

Mommsen, in the Introduction to his edition of the Collatio, p. 121, illustrates this discrepancy between the Codices by a comparative table of the chapters in Title XI. *de abactoribus*.

At the beginning of title.	Berlin.	Vercelli.	Vienna.
<i>before incipit</i>	kp. DCLXXX.	kp. LXXXVIII.	kp. LXXXIII.
" c. 2	kp. DCLXXXI.	kp. LXL. ⁴	kp. LXXXIII.
" c. 3	kp. DCLXXXII.	kp. LXL.	kp. LXXXV.
" c. 4	kp. DCLXXXIII.	kp. LXLII.	kp. LXXXVI.
" c. 5	kp. DCLXXXIII.	kp. LXLIII.	kp. LXXXVII.
" c. 6	kp. DCLXXXV.	kp. LXLIII.	kp. LXXXVIII.
" c. 7	kp. DCLXXXVI.	kp. LXLV.	kp. LXXXVIII.
" <i>sed etiam</i> ¹	—	kp. LXLVI.	—
" <i>eodem re-scripto diui Hadriani</i> ²	kp. DCLXXXVII.	kp. LXLVII.	kp. XC.
" c. 8.	kp. DCLXXXVIII.	kp. LXLVIII.	kp. XCI.
" <i>si quis bouem</i> ³	—	kp. LXLVIII.	kp. XCII.

¹ Tit. II. 7. 4. ² Tit. II. 7. 5. ³ Tit. II. 8. 1. ⁴ LXL. in this manuscript, here and elsewhere for XC.

of Th. Beza 1603; in Pithou's *Opera Sacra* 1609; *Critici Sacri*, London, 1660, Vol. VIII.; Frankfurt 1696, Vol. VIII.; Amsterdam, 1698, Vol. I., Part II., columns 193-248. Pithou's first edition was published in Paris after the massacre of St. Bartholomew. The editions may be placed under three categories. The first consists of those that closely follow Pithou's first edition; viz.: the Basel edition, 1574, and the five Collections of Sacred Law to which reference has been made above. For although the Editors all claim that they have corrected Pithou's notes, the emendations apply exclusively to typographical errors, some of which had been corrected by the Basel Editor. The second category consists of editions which more or less disregard Pithou's edition, even in the context, and either altogether omit his notes or give them with additions. Such are the editions published at Geneva, Leyden, Heidelberg and Lyons. The third category consists of editions which do not lightly overthrow the authority of Pithou's Manuscript, but wherever possible, correct its errors in the notes. Stephanus, Cujas, Schulting and Biener have worked on these lines. In this class must also be included the Paris Edition of 1689 which contains the notes of Pierre Pithou and of his brother, augmented from the Pelletere Library.

Of Commentaries there are altogether four, those of Pithou, Schulting and the two by the Cannegieters, Joseph and Hermann. Hermann Cannegieter gives the correct references to the texts taken from the Pentateuch.

A list of Authors who have worked at the Collatio is given in the Appendix. Since Blume, Huschke and Mommsen have edited the Collatio; Dirksen and Rudorff have written dissertations on it.

TITLE AND PLAN OF THE WORK.

THE current designation is *Collatio* or *Pariatio Mosaicarum et Romanarum Legum*.¹ This title cannot be traced to the Compiler, nor is it found in the Codices. It originated with the first editors and their contemporaries.²

The compilation has also been called *Fragmenta Pithoei*,¹ after their re-discoverer. It is sometimes styled *Lex Dei*¹ from the opening words.

The plan of the Compiler is to give texts from the Pentateuch followed by passages from the Roman Law bearing on the same topics.

There are 16 Titles, viz.: 1. Concerning Murderers; 1a. Accidental Homicides; 2. Aggravated Injuries; 3. Cruelty to Slaves; 4. Adultery; 5 and 6. Other Sexual Offences; 7. Theft; 8. False Testimony; 9. The Inadmissibility of the Testimony of Relatives; 10. Deposit; 11. Cattle-raiding; 12. Arson; 13. Removal of Landmarks; 14. Kidnapping; 15. Sorcery and other Forbidden Arts; 16. Statutory Succession.

The topics are not selected haphazard. The titles correspond to the Second Half of the Decalogue. Titles I. and IA correspond to the Sixth Commandment, "Thou shalt not kill." Titles II. and III. are corollaries. Titles IV., V. and VI. correspond to the Seventh Commandment, "Thou shalt not commit adultery." Title VII. to the Eighth Commandment, "Thou shalt not steal." Titles VIII. and IX. to the Ninth Commandment, "Thou shalt not bear false witness against thy neighbour." Titles X.-XV. exemplify various forms in which the infraction of the Tenth

¹ The superscription in all the MSS. refers to the work as *Lex Dei*. The Vienna MS. begins Title IV., *Incipit de adulteris constitut. iiii de Legem Moysi*. Schulting, in a note to Paulus, v. 23, § 9, calls the book *Lex Dei*. Charondas, in Notes on Justinian's Code (xv. Note 3), and Cujas also refer to it as *Fragmenta Pithoei* or *Fragmenta a P. Pithoeo edita*. Another title adopted by editors is *Collatio Legum Mosaicarum et Romanarum*. Stephanus, in his edition 1580, and Cujas, in his edition 1586, name it *Lex Dei siue Mosaicarum et Romanarum legum uetus Collatio*. In the Geneva Edition 1586, it is called *Collatio legum Iudaicarum et Romanarum*. Marcellus, in his *Leges XII. Tabularum Collecta et Interpretamentum* (Paris, 1600; also in Otto's *Thesaurus*, 1733, Tom. iv., chap. 56) calls it *Legis Mosaicæ Pariatio siue comparatio*. Heineccius (*ad leg. Jul. et Pap. Popp.*, lib. ii., chap. 7, p. 190) styles it *Pariator legum Mosaicarum et Romanarum*. See Blume, *Proleg.*, l. c. vi., vii.

² See Schulting, Notes to the Collatio, 1, 1, note 1; Blume, *l. c.*, p. x. and in the *Zeitschr. f. Gesch. R. W.*, x., p. 308.

Commandment, "Thou shalt not covet," may be manifested. Title XVI., "Of Intestate Successions," stands in a separate category. With the exception of this last and of Title IX, which is a pendant of, and closely connected with, Title VIII, they all treat of such wrongs to private individuals as are punished by the State.

The last title "Of Statutory Successions," belongs to a division of private law where intervention of the public authorities is called for, owing to a failure of testamentary disposition. Whether this title forms the conclusion of the book or whether it was intended as the beginning of the second part of a larger work now lost it is impossible to decide. Huschke and Rudorff think that the XVIth title completed the work.¹ Mommsen holds that it begins a new division no longer extant, and that the work, as we have it, is incomplete and fragmentary.²

The Collatio opens: *Incipit lex dei quam deus precepit ad Moysen.*

This superscription cannot be regarded as descriptive of the entire work; for then it should have been completed by some such clause as *et lex Romana quomodo conveniunt*. Mommsen regards the whole line *Incipit . . . Moysen* as an interpolation by a later hand.

Hincmar,³ quotes the Collatio under the general designation of *Leges Romanae* and also with the phrase *primo libro legis Romanae*, possibly because it stood first in a Codex of Roman Law, or because his Codex had the words *liber primus* at the beginning of the Collatio.

The titles into which the Collatio is divided are introduced by superscriptions and subscriptions. Do these form part of the original work, or have they been added by a later hand?

¹ Huschke in the last note to the Collatio (p. 705, note 11) in his edition of the ante-Justinian Law: *Ceterum haec sententia tam apte in fine huius materiae posita est, ut ea ipsa hunc titulum finivisse Collationis auctor existimandus sit.*

Rudorff in his Essay, *Ueber den Ursprung und die Bestimmung der Lex Dei oder Mosaiscarum et Romanarum legum collatio* (pp. 279, 280), after speaking of certain laws of Constantine and Leo, says: *Diese Gesetze aber beginnen mit der Intestaterbfolge, mit welcher die Collatio im sechzehnten Titel de legitima successione abschliesst.*

² Mommsen appends to his edition: *reliqua desunt.*

³ Hincmar, *Opp. ed. Sirmond*, Tom. i., p. 627, *Unde et leges Romanae decernunt in capitulis de stupratoribus*, and again *ibidem*, p. 634: *Sicut in primo libro legis Romanae capitulo sexto de stupratoribus et in capitulo septimo de incestis et turbis nuptiis.* See Savigny, *Geschichte des roemischen Rechts im Mittelalter* 2^e, p. 282. See also discussion on quotation from Hincmar at the beginning of the previous Essay.

They are certainly older than the ninth century, for Hincmar, who wrote about 860,¹ quotes *de stupratoribus* and *de incestis nuptiis* in the same order and under the same rubrics as they are found in the MSS., though as we have seen, he numbers them sixth and seventh instead of fifth and sixth.

This is certain, that the division into titles lay in the original plan of the work. The titles, as a rule, begin with texts from the Pentateuch, which distinctly point to the subject matter that follows. To this rule there are but three exceptions. Title I. chap. 5, and Title VI. chap. 5 commence with Biblical texts which do not begin titles; and the Scriptural text at the beginning of Title VII. is introduced with a reference to the XII. Tables.

There is another indication of the division into titles. Where the same source is quoted more than once in the same title, the second and succeeding excerpts are preceded by such phrases as *Item* or *Idem* (IV. ch. 9 and 10); *idem sic* (IV. 11); *idem eodem libro et titulo* (VIII. 6); *Ulpianus libro et titulo qui supra relati* (I. chap. 6); *Paulus libro et titulo qui supra* (I. chap. 7); *Item Paulus libro qui supra et titulo* (I. chap. 4); *Idem eodem libro* (XVI. chap. 6, 7, 9); *Idem libro qui supra* (XVI. chap. 8). But where a new title begins, excerpts have always a complete superscription with the name of the author and title of his book, even where the previous title concludes with a quotation from the same work. This principle is consistently carried out (Cp. Title IV., chap. 12, with Title V., chap. 2; Title VI., chap. 3, with Title VII., chap. 2; Title XI., chap. 7, with Title XII., chap. 5; Title XIII., chap. 3, with Title XIV., chap. 3).

The application of this principle settles the question whether Title IX. is to be regarded as the conclusion of Title VIII. This view is favoured by the subscription at the end of Title IX. in the Vienna MS—*Explicit de falso testimonio*—which corresponds with the superscription to Title VIII. In the Berlin M.S., however, the subscription to Title IX reads:—*Explicit titulus de familiaris testimonium non admittendo*. But the crucial test is the fact that at the beginning of Title IX., an excerpt is given from Ulpian, introduced with name of author and title of work, set out in full, though both are already quoted at the conclusion of Title VIII. Hence it may be concluded that we have here two separate titles. And, in fact, they treat

¹ Duemmler: *Geschichte des Ostfränkischen Reichs*, I., p. 457.

of different topics. Title VIII. discusses the penalties attached by the *Lex Cornelia Testamentaria* to False Testimony. Title IX. enumerates the degrees of relationship to which the *Lex Julia de Vi* granted exemption from giving evidence, and also states the grounds for suspecting the truth of testimony tendered.

The superscriptions are based on the headings to the principal quotations from the Roman Law cited in the titles, usually the first but sometimes a later one.¹ Two Titles (VIII. and IX.) are exceptions. The superscriptions to these adequately express the contents, but are not found in the headings to the excerpts. The superscriptions and subscriptions are generally but not always identical.² The variations are slight, and may be due to copyists.³ The subscriptions are regarded by Mommsen as additions by a later hand. He therefore omits them in his edition.

The texts from the Pentateuch are given in condensed form, as the compiler's object was not to quote the scriptural texts literally, but only to reproduce their substance. They are not taken from Jerome's Vulgate, but either in a free translation from the Septuagint, or from the Itala,⁴ properly styled the *Vetus Latina*.

The phrase *sicut lectio manifestat* (Title VII., chap. 1) would point to the Itala which was in common use. Mommsen also, in his edition of the *Collatio* (pp. 131-134) sets forth texts in Augustine's *Speculum* and the ancient Lyons and Würzburg Codices, which show an agreement in style between the Itala and the *Collatio*.⁵ Hincmar, in quoting the *Collatio*, gives the full

¹ Cp. superscription of Title iii., *De iure et saeuitia dominorum*, with heading to iii. 3. *Ulpianus.....de dominorum saeuitia*; superscription to Title vii., *De furibus et de poena eorum*, with heading to vii. 4, *Ulpianus de furibus*; superscription to Title xiii., *De termino amoto*, with heading to Title xiii., *Ulpianus.....de termino moto*. The superscription to Title xv., *De Mathematicis, Maleficis et Manichaeis* combines part of the heading to xv. 2, *Ulpianus.....de Mathematicis et Vaticinatoribus*, and the whole of the ending to the heading of xv. 3, *Gregorianus.....de Maleficis et Manichaeis*.

² Cp. Title III., *Incipit: De iure et saeuitia dominorum*; *Explicit: De dominorum saeuitia cohibenda*. Title VI., *Incipit: De incestis nuptiis*; *Explicit: De adulteris, stupratoribus et incestis nuptiis*. This last named subscription combines the rubrics of Titles IV., V. and VI.; Title VII., *Incipit: De furibus et de poena eorum*; *Explicit: Titulus de furibus*. Title XV., *Incipit: De Mathematicis et Manichaeis*; *Explicit: De Mathematicis, Maleficis et Manichaeis*.

³ Blume, *Zeitschrift für Rechtswissenschaft*, Bd. X., p. 303.

⁴ The Itala was the version in use before Jerome's translation, and was made from the unrevised edition of the Septuagint (See Smith's "Dictionary of the Bible," pp. 3453, 3454).

⁵ See Appendix, pp. 151-158. This was already noted by Blume and earlier editors. There is an extract from Venema's study of these texts in H. Cannegieter's *Comm. ad Fragmenta Veter. Jurisprud.*, p. 5. See also Fr. Münter: *Specimina Fragmentorum Version. Antiquar. in libris jur. et Rom. et Can. Miscellanea Hafn. theolog. et philolog. argumenti*. Tom. II., p. 89, Hafn., 1824. Quoted in Blume.

scriptural texts from Jerome. The real reason why the Vulgate was not used is because it had not yet been adopted as the authorised version of the Church. While the Septuagint was, at a very early period, invested with canonical authority,¹ the use of the Vulgate by the clergy cannot be traced back beyond the 6th century;² and it was not till 1546 that the Council of Trent, in its fourth session, made its exclusive use obligatory in the Roman Church.³

The texts from the Pentateuch are placed first as being the expression of the Divine will. But there is no intention to give a detailed exhaustive exposition of the whole of the Mosaic legislation, or even of its jurisprudence. Single texts only are given, and these are frequently not fully set out.

The topics treated in the *Collatio* are all contained in Exodus, chaps. xxi. and xxii. But not all the topics found in these chapters are referred to in the *Collatio*. There is, for example, no reference to the emancipation of Hebrew slaves after six years' service, the subject with which Exodus, chap. xxii. opens. The reason of the omission may be that the treatment of slaves in the Roman Law fell below the standard of humanity enjoined in the Mosaic

¹ *Augustine De Civitate Dei*, XVIII., chap. 42, at the end. After recounting the legend that the seventy translators, though in separate rooms, gave the same version of the Bible, the Bishop of Hippo concludes: *et ideo tam mirabile Dei munus acceperant, ut illarum scripturarum, non tamquam humanarum, sed sicut erant, tamquam divinarum, etiam isto modo commendaretur auctoritas credituris quandoque gentibus profutura, quod iam videmus effectum.*

² "At first Augustine thought the new version of the Old Testament (Jerome) too revolutionary, and almost to the end of his life clung to a belief in the inspiration of the Seventy. He wrote of Jerome's translation, however, with increasing respect, and occasionally quotes from it (e.g., *De Civitate Dei*), and in his last work, the genuine *Speculum* (a collection of Biblical extracts left unfinished at his death in 430), he follows the new version wholly, except where he quotes from memory. In the 6th century, Cassiodorus seems to have treated the two versions on an equal footing, but Isidore of Seville in the 7th century uses Jerome exclusively. From that time it really deserves the name "Vulgate," now universally applied to it, though, as a matter of fact, it was not so called before the time of Roger Bacon. In Jerome's own works *Vulgata* means the "Old Latin" (Hastings' Dict. Bible, col. 5,024, 5,025).

³ The Fourth Session of the Council of Trent, held on the 8th day of the month of April, in the year MDXLVI. "The Canons and Decrees of the Council of Trent." London, 1848, p. 19.

The *Acta Concilii Tridentini*, published at Antwerp, 1546, pp. 92, 93: *Decretum tertiae (sic) sessionis Concilii Tridentini, quae celebrata fuit quinta Aprilis eodem anno. Insuper eadem sacrosancta Synodus considerans non parum utilitatis accedere posse ecclesiae Dei, si ex multis Latinis editionibus, quae circumferuntur sacrorum librorum, quatenus pro authentica habenda sit, innotescat: statuit et decrevit ut haec ipsa vetus et vulgata editio quae longo tot seculorum usu in ecclesia ipsa probata est, in publicis lectionibus, disputationibus, praedicationibus, aut expositionibus, pro authentica habeatur, et quod eam nemo reicere quovis praetextu audeat vel praesumat.*

Code. The biblical examples of the *Lex Talionis* are omitted, probably for the opposite reason. Roman Law, at the time of the Collatio, had outgrown the crude early doctrine, just as had the rabbinic¹ legal development, which interprets "eye for eye," and "tooth for tooth" as meaning monetary compensation. Though there is abundant material in the Pentateuch from which a catena of passages might have been drawn for each of the topics of the Collatio, the compiler has chosen to place at the head of each title a single scriptural text—that which seemed to him the fittest parallel to the principle of Roman Law he was expounding. In two cases, he gives texts in the middle of Titles. Title I., chap. 5, continues the text in Title I., chap. 1., and Title VI., chap. 7, § 1 repeats the substance of the text in Title VI., chap. 1. In the former case, the scriptural verse is an apt introduction to the corresponding rules of the Roman Law which follow. In the latter case the text at the beginning of the title is included in an altered form with other texts placed at the end of the title in order to emphasize the heinousness of incestuous unions.

The topics and their arrangement were, as already remarked, suggested by the second half of the Decalogue, and do not follow either the order in Exodus xxi. or in Leviticus xviii. and xx. What is joined together in the Pentateuch is broken up in the Collatio, if this will better serve the governing principle of comparison with the Roman Law. Thus, Breach of Trust and Injury to Property are joined together in the Pentateuch, Exodus xxii. 1-13; in the Collatio they are distributed under Titles VII., X. and XII. So, too, the rules concerning Testimony are divided in the Collatio under Titles VIII. and IX.

The excerpts from the Roman Law are taken from the Five Jurists and from the Hermogenian and Gregorian Codes. Papinian's writings are used sparingly, except in Title IX., where numerous extracts are cited from his *Liber Singularis de adulteriis*. Of Paulus' works, the *Libri Sententiarum* are cited, and Ulpian is represented exclusively by his *de officio proconsulis*. The Compiler aimed at the inclusion of those

¹ Babylonian Talmud, *Baba Kama*, 83b. and 84a., in the discussion on the Mishna, *ibid*, chap. viii., § 1: "If one inflicts physical injury on another he has to pay compensation for five things: actual damage, pain suffered, cost of medical treatment, loss of employment, humiliation."

² See Sources of Roman Law, in Appendix, pp. 277-280.

passages which pregnantly represented actual practice. Hence, the special attention paid to Paulus' *Sententiae*.¹ The Compiler referred to the latest Constitutions² (Title XIV., chap. 3, § 6). He also gives (Title V. 3), a Constitution of Valentinian, Theodosius and Arcadius, which is contained in the Theodosian Code (IX. 7, § 6) in a mutilated form (from *omnes quibus flagitii*) and with a different subscription.³ The Constitution is preceded in the *Collatio* by an introductory paragraph ending with the unusual phrase *Item Theodosianus*. Though opinions have varied in the past, it is now accepted that this Constitution was not taken by the *Collatio* from the Theodosian Code.⁴

Godefrey (Gothofred),⁵ in his commentary on the Theodosian Code *in loco*, suggests that the Constitution was taken by the Compiler of the *Collatio* from the Theodosian Code, in which it originally stood, as is shown by the phrase *Item Theodosianus*; that it afterwards dropped out of the MSS. of the Code and was re-inserted in a shortened form taken from Alaric's Breviary.

Huschke⁶ argues from the fact that the compiler uses the Gregorian and Hermogenian Codes as regular sources, while

¹ See Theod. Cod., I. 4, § 2. *de resp. prudent.*; where Constantine speaks of Paulus' *Sententiae ad filium* as *libros plenissime luce et perfectissima elocutione et iustissima iuris ratione succinctos*. They came to be called *Receptae Sententiae*, because, though Paulus first wrote them for the instruction of his son, their excellence brought them into general use.

² *Ex nouellis constitutionibus*. This, according to Huschke, refers to Constitutions of Diocletian and Maximian, 287 (Cod. Just., IX. 20, § 7), and of Constantine, 315 (Cod. Theod., IX., 18), (Cod. Just. IX. 20, § 16).

³ Pp. in *foro Traiani*, VIII., Id., *Aug. Valentiano*, A. IV. *et Neoterio Coss.*, instead of *Prop. pr. Maias Rome in atrio Mineruae*.

⁴ Pithou is doubtful as to the source. Note i., 1: *Illud potius mirer, cur hic idem de impudicis legem non ex Praefecturae scriniis, sed ex Theodosiano Cod. pleniorum recitat quam hodie in corpore ipso extet.....* (Note on v. 3) *sunt haec aut collectoris aut alterius cuiusdam qui haec postea ex Theodosiano adiecit, uel potius ex Praefecturae urbanae archiuis. Nam in ipso codice haec constitutio brevius relata est.*

⁵ Godefrey says that the phrase "item Theodosianus" proves that the constitution was taken from the Theodosian Code, from which it afterwards dropped out, and in which it was re-inserted in a shortened form:

Extat autem haec lex praefatione et epilogo apud Authorem coll. ll. Mosaicarum tit. de stupratoribus..... Quo argumento liquet ut multas alias constitutiones, ita et hanc quoque legem nostram ab Alaricianis decurtatam. Id enim uerius est quam ut credamus (quod suspicabatur V.C. Pithoens) ex Praefecturae Urbanae scriniis a collectore illo, uel ab alio, hanc legem ita plenius relata. Aperte enim, ex Codice Theodos. eam allegat author seu Pariator ille Item, inquit Theodosianus.

⁶ Huschke (*Zeitschrift für Geschichtliche Rechtswissenschaft*, Bd. XIII., pp. 3-6), Haenel (*Edition of Th. Cod.*, ix. 7, 6.), and Mommsen (*Edition of Collatio*, p. 127) are certain that the compiler did not know the Theodosian Code.

apart from this passage, he only refers to the Theodosian Code once again (cp. *Sciendum est ex nouellis constitutionibus*, Title XIV., at the end with Th. Cod., IX. 18), that the quotation here was not taken from that Code.

Item Theodosianus is accordingly a later addition by a scribe who found the Constitution in the Code, and thought a reference to it should be inserted in the Collatio. The phrase *Item Theodosianus* instead of *Theodosius in Libro IX.*, is not in the style of the Collatio. Finally, the different subscriptions show that the Constitution was taken in the two works from different sources.

Haenel¹ and Mommsen¹ agree with these views, and the latter edits *Item Theodosianus* as an interpolation.

The Gregorian and Hermogenian collections of Constitutions are used equally. There is the same number of extracts from each. But citations from the Gregorian Collection occur in five titles: those from the Hermogenian only in two titles. Extracts from both are given near each other, as is indeed also the case with the Vatican fragments (266a, 270, 272).

The texts from the Jurists and Codes are quoted faithfully and exactly.² The source and date of each extract are carefully stated in the superscription and subscription respectively. Title VI., chap. 5, quotes one of Diocletian's Rescripts from the Hermogenian Code, followed by a statement (VI., 6, 1) of the variation in its date, as given in the Gregorian Code. Occasionally, however—as in Title V., chap. 3; Title X., chap. 5; Title XV. chap. 3, § 8; Title VI., chap. 4—Constitutions are quoted without naming the Emperors under whom they were issued. As regards the first of these exceptions, Huschke³ thinks that this Constitution of Valentinian, Theodosius and Arcadius had only just been issued; hence the Emperors are not mentioned in the subscription.

Where the Compiler begins a passage but does not complete it, he adds the phrase *et reliqua*. The instances are Title I., 3, § 1; I., 12, § 1; II., 2, § 1; IV., 3, § 6; VII., 3, § 4; VIII., 7, § 3; IX., 2, 3.

In two cases (Title VII., chap. 1, and Title XIV., chap. 3, § 6) the Compiler does not quote verbatim, but only gives the sense of

¹ See note 6 of previous page.

² Cp. Gaius iii. 5 with Collatio xvi. 2, and Ulpian Fr. xxvi. with Collatio xvi. 4

³ *l.c.*, p. 7.

the passages or a summary of their contents. This he clearly indicates.

Excerpts from the Jurists usually precede those from the Constitutions. But there are exceptions to the rule. Thus in Title Ia. *De casualibus homicidiis*, excerpts from Ulpian (chap. 6) and Paulus (chap. 7) are followed by rescripts from the Gregorian Code (chaps. 8-10), which, in their turn are succeeded by extracts from Ulpian, Modestinus and Paulus. Apparently, this order was chosen, because it exhibits more clearly the parallelism between Roman and Mosaic Jurisprudence. Title VI. gives an extract from the Constitutions and then one from the Jurist Papinian, because the former discusses the whole principle of the law, the latter only a single point.

The Compiler's own remarks deserve notice. Beside the rubric at the beginning of the work, *Incipit lex dei quam dominus (s. deus) dedit ad Moysen*, which Dirksen and others regard as part of the original text, while Mommsen thinks it a later addition, the formularies introducing the scriptural texts, *Moyses dei sacerdos haec dicit* (I. 1.); *Moyses legaliter dicit* (I. 5); *Moyses dicit* (IV. 1); *Moses dicit* (V. 1); *Lex diuina sic dicit* (VI. 7); *Scriptura diuina sic dicit* (XVI. 1), set up a claim of divine authority for the Law of Moses.

A passage at the end of Title V. chap. 2 gives expression to the Compiler's aspiration that the Mosaic Law should serve as a norm for Roman Legislation. After concluding his quotation from Paulus' *Sententiae* on the punishment of pederasty, which was only capital when both participants were consenting parties, the compiler adds: *Hoc quidem iuris est, mentem tamen legis Moysis Imperatoris Theodosii constitutio ad plenum secuta cognoscitur*. The writer thus approves the wholesome stringency of the Mosaic Law, censures by implication the ancient *jus*, which he contrasts with the Imperial Legislation,¹ and praises the latter for reflecting the spirit of the Pentateuch. The Emperor's Constitutions are to correct the want of harmony between the Roman and the Divine Law.

Characteristic also is Title VI., which speaks of Incest. After

¹ A modification effected by a Constitution in the penalty meted out by the ancient *jus* is referred to in Title xiv., chap. 3, § 6, on Kidnapping. A quotation from Ulpian concerning the *Lex Fabia de plagiariis* is followed by this statement: *Sciendum tamen est ex nouellis constitutionibus capitali sententia pro atrocitate facti puniendos; quamuis et Paulus, relatis supra speciebus, crucis et metalli huiusmodi reis irrogauerit poenam.*

quoting a scriptural text, prescribing death for forms of the offence, followed by passages from the Roman Jurists and Constitutions, which show no correspondence with the Mosaic Law in regard to the penalties, the Compiler furnishes a second and complete *résumé* of the Pentateuchal maledictions on Incest, prefaced by the statement: *idem dicitur in eos qui incestas nuptias contraxerunt. maledicti tamen sunt omnes incesti per legem, cum adhuc rudibus populis ex diuino nutu condita isdem adstipulantibus sanciretur. et utique omnes maledicti puniti sunt, quos diuina et humana sententia consona uoce damnavit.*

The introduction in chap. 4 of this Title is also noteworthy. *Gregorianus libro quinto sub titulo de nuptiis. Exemplum litterarum Diocletiani et Maximiani imp. talem coniunctionem grauitur punire commemorat.* This passage clearly indicates that the compiler considered the ordinary Roman *Jus* too lax, and needing correction by Imperial legislation.

Significant, too, is the introduction in Title VII.: *Quod si duodecim tabularum nocturnum furem [quoquo modo, diurnum] autem si se audeat telo defendere, interfici iubent, scitote, iurisconsulti, quia Moyses prius hoc statuit, sicut lectio manifestat. Moyses dicit, etc.* The text from the Pentateuch is exceptionally preceded by a citation from the Roman Law. This departure from the regular practice is connected with the underlying idea of the previous passage. At the conclusion of Title VI., the Compiler emphasizes the stringency of the Divine Law. At the beginning of Title VII., he points out that, in regard to theft accompanied by violence, the Law of Moses was an anticipation of the Law of the Twelve Tables.

These considerations prepare the way for a discussion of the Problems of the Purpose of the *Collatio*, its Date, and Authorship.

PURPOSE OF THE COLLATIO.

THE purpose of the Collatio is nowhere explicitly stated, and has given rise to much diversity of opinion.

Its object was not to teach Roman Lawyers the Law of Moses; for then, more passages would have been cited from the Pentateuch. Nor had the Compiler the Christian Clergy exclusively in mind, for he addresses the Roman Advocates as well: *Scitote juris consulti*.¹

Blume's view is that the aim was to point out the similarities between the Roman and the Mosaic systems of Law, and thus to demonstrate that the former was derived from the latter.²

Dirksen goes further and suggests that the author desired that the judges of the Roman Empire should decide cases to which Roman Christians were parties in conformity with the Mosaic as well as with the Roman Laws.³ This view is groundless. To have applied in the Courts both systems of Jurisprudence would have occasioned endless confusion, and, at that time already, no Christian would have felt himself bound by the Mosaic Law in such matters as Inheritance.

Huschke holds that the aim of the Collatio was to exhibit the agreement between the enactments of the Roman and Mosaic systems, and thus check the arrogance of the heathen jurists who exalted the Roman Law at the expense of the Divine

¹ Collatio, Title vii., chap. 1, § 1.

² Blume, *Proleg.*, l. c., p. 8. *Maxima inter Cassiodorum nostrumque auctorem non solum sententiarum sed etiam dicendi generis est similitudo. nam etsi Hieronymos, Augustinus, aliique iam ante Cassiodorum de similitudine ac dissimilitudine diuini humanique iuris saepius egerint, pauci tamen praeter Tertullianum in ea sententia fuisse uidentur ut omnia humana iura a Moysis legibus tamquam communi fonte essent deriuanda, quod Cassiodorum potius Isidororumque statuisset uidemus.* These views, referred to by Blume, are expressed by Tertullian, *Apologetic.*, chap. xlv.: *Dum tamen sciatis ipsas quoque leges uestras quae uidentur ad innocentiam pergere, de diuina lege ut antiquiore forma mutuatas.* At a later period Leo Magnus declared (Epistle 167), in reference to a matrimonial cause, *multo prius hoc ipsum Domino constituyente, quam initium Romani iuris existeret.*

³ Dirksen, *Hinterlassene Schriften* ii., p. 125. *Irren wir nicht, so ist in unserer Rechtssammlung überall nicht die Bekämpfung des Heidentums durch das Christentum bezweckt, sondern vielmehr der Plan verfolgt worden, zu zeigen dass die christlichen Einwohner des römischen Reiches nicht ausschliesslich nach den geltenden weltlichen Rechten gleichviel ob heidnischen oder christlichen Ursprungs in juristischen Verhältnissen zu beurteilen seien, sondern dass auch dem göttlichen Recht eine selbstständige Geltung und Anwendung abseits der weltlichen Gerichtsbarkeit vindicirt werden müsse.*

Legislation, condemned the latter as antagonistic to the institutions of the Roman Empire, or disparaged it as inferior in value to the Roman Legislation.¹ The Compiler of the Collatio, accordingly, distributed his material under various titles, aptly drawn from different branches of law; placed at the head of each title a precept of the Mosaic Code, and then gave extracts from the Five Jurists, the Hermogenian and Gregorian Codes, and occasionally the new Constitutions, to show what a luxuriant crop had sprung up out of the seeds of Mosaism.²

In criticism of this view, it has been pointed out³ that already in Theodosius' day, and even at an earlier period, the need for defence against the pretensions of heathendom no longer existed. And indeed, if the purpose of the Collatio was to humble heathen jurists by exhibiting the glorious splendour of the Divine Legislation, that purpose has not been achieved. The texts from the Pentateuch are few and meagre where they might have been numerous and full; and they are swamped by extracts from the Jurists and the Codes. Again, if the Collatio was intended to be apologetic, the order of the citations from sacred and profane sources respectively should have been reversed. Examples of rules of Roman Law ought to have come first, followed by full and varied quotations from the Pentateuch, and stress might also have been appropriately laid upon the spirit of humanity and equity which informs the Mosaic legislation.⁴

Another suggestion is based on the fact that the Biblical texts cited are all from the Pentateuch. Hence the conjecture that the permission accorded by the younger Theodosius and his co-Regents to Jews to practise in Roman Courts (Theod. Cod. xvi. 8, chap. 2-5, and 24, *De Judaeis*), may have given birth to the Collatio, which was to serve budding Jewish lawyers as a guide.

This theory can be confidently dismissed as baseless.⁵ There is no reference to the work in Jewish literature, though there is abundant evidence of the influence of Roman Law on

¹ Huschke (edition Ante-Justiniani Juris, etc.), p. 646; cp. Huschke, *ibid.*, p. 669, notes and 7, on Title vi., chap. 7; p. 670, note 2 on Title vii., chap. 1, § 1.

² Huschke, *l.c.*, p. 646.

³ Dirksen, *Hinterlassene Schriften*, ii., pp. 124 and 125.

⁴ See "Additional Notes" (Jewish Law), p. 159.

⁵ Dirksen, *l.c.*, p. 126, note 10. H. Zimmern, *Geschichte des Röm. Privat-Rechts* Tom. i., § 7 (not in British Museum) *apud* Blume, points out that the author might have been a Jew. This had already been suggested by Freher (*Parerg.* 1, 9,) only to be rejected by him. See note 2 at the beginning of the Essay on the Authorship of the Collatio, p. xlix.

Talmudic Jurisprudence.¹ The reason why the Compiler limits his selection of Biblical texts to the Pentateuch is because, in the whole of Sacred Writ, the Mosaic Legislation alone offered him material for comparing and contrasting the Law of God with Roman Law.

The most reasonable view is that the Collatio was prepared for the instruction of Christian clerics, and served as an introduction to the study of the Roman Law, perhaps also as an elementary guide in practice. This would account, on the one hand, for the amplitude of the references to the Roman sources, and, on the other, for the arrangement of the topics according to the second half of the Decalogue, which contains the fundamental principles of the duties to our neighbours. It would explain how the Collatio came to be regarded as one of the *Fontes Juris Romani*; its use by Hincmar in the divorce of Lothar and Tetburga; why it was found in the libraries of churches and monasteries, bound in the same codices with legal and theological matter.

The sentiments of the book are undoubtedly that the Divine Law is superior to human laws, that it answers better to the needs of humanity, and should influence legislation. These views are quite natural on the assumption that the Compiler was a Christian. If he was, at the same time, a cleric, it would account for the stress laid upon purity in sexual relations; it would explain the grief he felt at the prevailing laxity of morals, his indignation at the light penalties inflicted by Roman Law for Incest, and his desire that the Christian Rulers should correct the vices of the Empire by visiting this class of offence with heavier punishments, and thus act more in conformity with the rigorous standard of the Pentateuch.

These sentiments, however, it must be borne in mind, only find expression in isolated passages, and do not of themselves constitute the main purpose of the book, which clearly was *to teach Roman Law*.

¹ See Jost, *Geschichte der Israeliten*, iv., p. 240, and Z. Fraenkel (*der gesetzliche Beweis nach Mosaisch-talmudischem Recht*, p. 55 seq.) The last author denies direct borrowing, but admits influence of Roman on Jewish Law. *Dieses Recht ist aus verschiedenartigen Elementen zusammengefloßen . . . teils wurde Manches von den Rechten der Nationen unter denen die Juden lebten, der Griechen, Römer und der Perser entnommen.*

DATE AND PLACE OF COMPOSITION.

THE views concerning the date of the *Collatio* vary considerably. The opinion formerly held was that it belonged to the second half of the fifth century. Thus Pierre Pithou assigned it to a date later than 438, because it contains a Constitution of the Theodosian Code published in that year; but earlier than 445, or at least before the time when the collected novels were added to the Theodosian Code, since the Compiler of the *Collatio* would not have left unused Valentinian's novel, *De Homicidiis casu an uoluntate factis* of the year 445 (Haenel, *Nouellae Constit. Theodosii II., Valentiani III., etc.*, Title XIX., p. 186), if it had already been known.¹ Freher² and Jac. Gothofred³ are inclined to ascribe the work to the end of the fifth or the beginning of the sixth century. The latter⁴

¹ Pithou's Prefatory note. *Nunc de collectore huius libelli cuius nomen titulumque exemplar ipsum prioribus duabus paginis purum non praetulit hoc tantum dicere possumus, uideri eum Theodosii iunioris temporibus uixisse, et post consulatum quidem ipsius xv. (should be xvi.) quo demum Codex editus legitur, ex quo hic constitutionem retulit unam, non ommissurus, ut uerisimile est, de homicidio non uoluntario Valentiniani singularem legem si tum quoque edita, aut in certum Novellarum corpus redacta fuisset. Sed de re incerta nihil temere affirmare uelim.*

² See note 3 to page XLIX.

³ *Proleg. ad Th. Cod.*, chap. 3, p. CXC., Lugduni, 1665.

⁴ Examples given by Gothofred:—

COLLATIO.	CASSIODORUS.
Tit. i., chap. 5, 1. <i>Moyse legaliter dicit.</i>	Lib. vi., formula 8. <i>proximos defunctorum nobis legaliter anteponis.</i>
	Lib. iv., cp. 37. <i>prouocasse legaliter.</i>
	Variarum 19. <i>legale compendium.</i>
Tit. v., 7, 1. <i>quos diuina et humana sententia consona uoce damnauit.</i>	9 Var. 9. <i>consonam uoluntatem dixit.</i>
Tit. vii., 1. i. <i>sicut lectio manifestat.</i>	4 Var. 39; 10 Var. 16 and 17, uses the word in reference to Biblical texts.

The Interpretation of the Theodosian Code, attributed to Arianus, uses *ad plenum* for *plene*, and *secuta cognoscitur* for *secuta est*. The opposition of *ius* and *lex* is frequently found in the Interpretation of Arianus. The following are examples of late Latinity:

modo instead of *nunc*. *modo ipse loquitur*, in Title i. 3, 2.

talis, instead of *hic*:

in talem coniunctionem, in Title vi. 4.

talem constitutionem, in Title i. 9.

tale rescriptum, in Title i. 10.

de terminia mota, superscription to Title xiii.

supra relatis speciebus, in Title xiv. 3, 6.

nouellas constitutiones, in Title xiv. 3, 6. Compare Theodoric's Edict at end.

plagiatores, instead of *plagiarii*, in Title xiv. 3, 6.

relies on the similarity of the language to that of Cassiodorus and contemporary writers, and on the fact that the author of the *Collatio* was careful to give not only dates, but titles of chapters, and furthermore was able to compare the differences in date and Consulship of Constitutions as reported in the Hermogenian and Gregorian Codes. All these data lead him to believe that the writer lived before the time of Justinian, when the Theodosian Code had not yet been tampered with, and that he was probably a contemporary¹ of Cassiodorus. Blume,² is of the same opinion, and supports it by the statement that, while Jerome, Augustine, and others before Cassiodorus frequently treated of the similarities and differences between the Divine and the Human Laws, Tertullian³ clearly enunciated the doctrine that human legislation has its source in the Law of Moses, a view which Cassiodorus⁴ and Isidore⁵ still more strongly laid down. Blume further argues that the use of *quia* for *quod* in the passage at the beginning of Title VII.: *Scitote iuris consulti quia Moyses prius hoc statuit*—a use probably derived from the Greek *ὅτι*—and the conjunction of *incipit* with the Accusative in the rubric at the commencement of the *Collatio*, *Incipit legem Dei*, as well as the phrases apparently of late Latinity mentioned by Gothofred, point to the close of the fifth century as the date of the work.

The Latinity prevalent at the close of the fifth century is, however, to be found much earlier among the church writers,⁶

¹ *Quare eo meus inclinatur ut credam circa decursum sexti saeculi scriptorem hunc uixisse, ante Justiniani tempora.....quo tempore Codex Theodosianus forte nondum a barbaris delibatus fuerat, et Cassiodori proinde coaetuum putem.*

² Blume, *ro*! g. to *Collatio*, p. viii., *ibid*, note 12.

³ Tertullian, *Apolog.* 45: *dum tamen sciatis, ipsas quoque leges uestras (sc. ea), quae uidentur ad innocentiam pergere, de diuina lege ut antiquiore forma mutatas esse.*"

⁴ Cassiodorus, lib. 4, var. 41; *ibid*, lib. 7, var. 46: *Institutio diuinarum legum humani iuris ministrat exordium, quando in illis capitibus legitur praeceptum, quae duobus tabulis probantur ascripta, sacer enim Moyses diuina institutione formatus Israelitico populo inter alia definiuit, etc., hoc prudentes uiri sequentes exemplum.*

⁵ Isidore, *Origin.* vi., 8, quotes under the *genera opusculorum*. *Praecepta sunt quae aut quid faciendum aut quid non faciendum sit docent. Quid faciendum ut diligere deum teum et honora patrem tuum et matrem tuam. Quid non faciendum ut non moechaberis, non furtum facies, similiter et gentiliū praecepta uel iubent uel uetant. Primus autem praecepta apud Hebraeos Moyses scripsit.*

⁶ Rudorff, *über den Ursprung und die Bestimmung der lex dei oder Mosaicarum et Romanarum legum Collatio* 275, 276. and Huschke, *Ztschrift. f. Geschichtl., Rechtsw.* xiii. (1846), pp. 22-24.

and some instances of this late style, are found in the earlier constitutions and classical writers.¹

More recently it has been denied that the Compiler knew the Theodosian Code. So, for instance, Haenel² dates the composition after 426 (the year of the Law of Citations) possibly after 429, the latter being the date of Theodosius' project³ to compile those portions of *ius* and *lex* which were still in use, and which, according to Haenel, inspired the preparation of the *Collatio*. It was composed before 438, because, had the author of the *Collatio* known the Theodosian Code, he would have quoted the Constitution of Theodosius I. and Arcadius incorporated in Title V., chap. 3, with statement of book and title, as in the case of citations from the Gregorian and Hermogenian Codes. This, however, he has not done.

Heimbach⁴ accepts the latter argument but not the former.

¹ Title i. 5: *Moyses legaliter dicit. Legale genus questionis* occurs in Quintilian, 3, 5, 4 and *ibid.* 8, 4, *legales tractatus. Legalis vita*=Life in conformity with the Law, in Tertullian, *advers. Marcion*, 4, 25.

² Title i. 2: *modo ipse loquitur Ulpianus. Modo for nunc* is used by writers of the classical period. Tibull. 1., 125, *iam modo non possum contentus vivere parvo*; See also Vergil, *Aen.*, IX, 140.

³ Title v. 2, *Hoc quidem iuris est, mentem tamen legis Moysis Imperatoris Theodosii constitutio ad plenum secuta cognoscitur*. The antithesis between *jus* (= *responsa iurisprudentum*) and *constitutio* occurs already in a Constitution of the year 422 (l. 17, C. de agric., xi. 47) in the phrase *et jure et legum auctoritate declaratur*. For *Ad plenum*—a unique phrase—there is a parallel in Macrobius, end of the 4th century, *Somn. Scip.*, 1, 5, *non pure nec ad integrum carens corpore*. The use of *cognoscitur* (= *noscitur*, *dignoscitur*), *esse* instead of *esse apparet* or *est*, is common already in Constantine's time. l. 7, Th. C., de exact. (xi. 7); l. 2, Th. C., ne collat. translata. (xi. 22); l. 3, Th. C., de protostas. (xi. 2); l. 2, Th. C., de indulg. debit. (xi. 28). The same remark applies to the frequent use of *talis* for *hic*, formerly only found in the poets.

⁴ Title vi. 5, *quos divina et humana sententia consona uoce damnauit*; cp. Apuleius, *Met.* 2, *totius orbis consono ore celebrari*, and l. 10 (8), Th. C., de diu. rescript (1, 2), *consultorum omnium consona responsione firmatur*.

Title vii. at the beginning, *sicut lectio manifestat*. For this use of *lectio* Gothofred has collated parallels from the 4th century. See his Commentary on l. 3, Th. C., de respons. prud.

Title vii. 5. The construction of *scire* with *quia* in Title vii. at the beginning, *Scitote iurisconsulti quia Moyses prius hoc dixit* is found in the Church writers of the 4th century, e.g., Rufinus Aquil. Comm. in Symbol., at the commencement: *Sententia sapientum quae probe admodum dicit quia de Deo etiam uere dicere periculosum est*. His preface to the *Sexti Sententiae* begins *Scio quia sicut grex ad uocem proprii pastoris libenter accurrit ita et religiosus auditor uernaculi doctoris admonitionibus gaudet*.

Plagiator, instead of *plagiarius*, is found in Tertullian and Jerome. 1. *Advers. Marcion*, 23: *Talis assertor (serui) etiam damnaretur in saeculo, nedum plagiator*. Cp. 5, n. 3: *Magistrum autem pueri tui, de quo dignatus es scribere (quem plagiatores eius esse non dubium est)*.

² Haenel's edition Th. C., ad leg., Jul. de Adult. ix., 7, 6, p. 846.

³ Th. C., i. 1, 5, *De Constitutionibus Principum et Edictis*.

⁴ *Jena Literarische Zeitung*, 1843, p. 719, quoted by Huschke in *Ztschr. f. Gesch.* R.W., vol. xiii., p. 2.

He denies the existence of any resemblance between Theodosius' project and the plan of the *Collatio*. Besides, the project of compiling the Imperial Constitutions and extracts from the writings of the Jurists might have occurred to some one before Theodosius the Second. As, however, only the Five Jurists named in the law of Citations are used in the *Collatio*, Heimbach considers it proved that the work was compiled after 426, the year of the law just referred to.

The reply to this is, that the use of the Five Jurists does not prove that the *Collatio* originated after 426. For the law of Citations did not create an innovation, but only validated and regularized current practice. It did not confer on the writings of the Five Jurists a fresh authority; but merely confirmed the authority which they already possessed. The recognition, therefore, of the Five Jurists affords no ground for assigning to the *Collatio* a later date than that of the Law of Citations. The precision with which the sources of the excerpts are given, indicates if anything, an earlier rather than a later date.

Huschke thinks that the *Collatio* should be dated soon after 390, the year of the Constitution quoted in Title V., chap. 3. The novelty of that constitution would explain its inclusion in a work which only quotes from Codes and the writings of the Jurists. This date would account for the exceptional omission of the Consulship in the subscription to that Constitution, and would also explain the absence from Title VI. of Lev. xx. 21, prohibiting marriage with a brother's wife and of its parallels in Roman Law.¹

The last argument is apparently not quite convincing, for the harmony between the Mosaic Law and the Roman Constitution is not complete. The Constitutions forbid successive marriages with two sisters even after the death of the first. But marriage with a deceased wife's sister is permitted by the Biblical Law. Again, those Constitutions absolutely forbid marriage with a brother's wife. Such a marriage is in the Pentateuch only prohibited during the brother's lifetime. Should he die without issue, a surviving brother is enjoined to marry the widow. Furthermore, among the imprecations at the end of Title VI., the curse against intercourse with a brother's wife is included. But, nevertheless, Huschke is right in pointing out that the

¹ *De incest. nuptiis* (Just. Cod. v. 5, l. 5), without subscription and of uncertain but, presumably, later date than 390, and the Constitution (Theod. Code, *de incest. nuptiis* iii. 12, l. 4) dated 415, which also prohibits such marriages.

Collatio would have included those two Constitutions if it had been written at a later date.

It is quite clear that the Compiler of the Collatio did not know the Theodosian Code. This can be demonstrated from the Collatio itself. As soon as that Code appeared, it became one of the principal sources of Roman Law, and would not have been ignored by anyone who aimed at a comprehensive compilation. But the Collatio only quotes the Five Jurists and the Gregorian and Hermogenian Codes. He indeed, mentions the *Leges Novae*,¹ but only twice, and then in a fashion which indicates that he regarded them as sporadic productions, not as having been systematically collected in a Code.

In neither case is the Theodosian Code treated as an independent source of Law like the Jurists' writings or the Hermogenian and Gregorian Collections of Rescripts. The New Constitutions are quoted or referred to as giving the Compiler's views or confirming them.

The phrase *item Theodosius*, formerly accepted as evidence that the author knew the Theodosian Code, is an interpolation² by a later copyist, who only knew the compilations, sought all constitutions after Constantine in the Theodosian Code, and felt impelled to add the reference in the Collatio.

All doubt on this head is removed when we note that the single Constitution found in both works is given more fully in the Collatio (v. 3) than in the Theodosian Code from which it professes to be taken. Even if we assumed with Gothofred that someone had shortened it in the latter, still this will not account for the difference in the subscriptions. In the Theodosian Code the subscription reads *p.p. in foro Traiani VIII. Id. August Valentiniano A.IV. et Neotherio Coss.*; in the Collatio, *Prop. pridie Id. Maias Romae in atrio Minervae*. Obviously, two editions of the same Constitution, published at different times and in different places, had been used in the Collatio and the Theodosian Code respectively. Again, if we consider the care and accuracy with which the Compiler always gives the date of the Constitutions he cites (cp. Title VI., chap. 6), the exceptional omission of the Consulship in the subscription of the Valentinian Constitution is only

¹ Title v., chap. 3. Title xiv., chap. 3, § 6.

² Haenel, *l. c.*, p. 846, thinks that the original reading was *Item* or *Idem* Theodosius, which was afterwards altered by a copyist into *Item* Theodosianus.

explicable on the assumption that the Constitutions had just appeared.

So far for the *terminus ad quem*. The *terminus a quo* must remain indefinite.

The Constitution in Title V. may show that the Collatio was issued not merely just after 390, the date of that Constitution, but after 394, the year of Theodosius' victory over Eugenius. This would explain the introductory remark, *mentem legis Moysi imperatoris Theodosii constitutio ad plenum secuta cognoscitur*. Though the Constitution was promulgated by the three Emperors named at its beginning, the Compiler might well have ascribed it to Theodosius alone, for Valentinian had died in 392, Eugenius had been beaten, and Theodosius was sole Emperor of East and West.

The fact that Theodosius is styled *Imperator* and not *Divus* does not even prove that the Collatio was compiled during that Emperor's lifetime, for, in another place too (VI. 4. 1), the Compiler mentions deceased Emperors, Diocletian and Maximian, under the title *Imperatores*, without the qualifying adjective *diui*.

The final conclusion is that the Collatio was composed certainly before 438, and after 390, possibly after 394. The last is the year of the victory of Theodosius over Eugenius; the first, that of the Theodosian Code which the Compiler did not know. The exclusive use of the Five Jurists does not prove that the work was written after 426, when the Law of Citations was promulgated; for that law merely legalised existing practice.

The place of origin is uncertain. Huschke assumes that the Collatio was composed in the East. He bases his view on the hypothesis that the Gregorian Code originated in the West, and that the Collatio exhibits a preference for the Hermogenian, which, according to Huschke, was the companion code for the East. He further contends that the Introduction to the Constitution in Title V., chap. 3, shows that the Compiler recognised Theodosius, Emperor of the Eastern half of the Empire, as his Emperor.

Both hypotheses are unproved; the data are capable of other interpretations.¹ That the Pentateuch is quoted in Latin rather than in Greek and that the extant Manuscripts hail from Italy are strong evidence in favour of the view that the Collatio was composed in that country.

¹ On the use of the Hermogenian and the Gregorian Code see Essay on the Plan of the Collatio, p. xxxvii.

AUTHORSHIP OF THE COLLATIO.

THE Author of the *Collatio*, it is agreed by nearly all critics, was a Christian.¹ Freher² indeed suggests that the Compiler might have been a Jew, who wished to dissipate the prejudice against his people and faith by showing that the Mosaic and Roman Laws were not so far apart, and that in fact the latter was derived from the former. He, however, dismisses the suggestion, and assumes that the Compiler was a Christian monk.³ This is not probable, as before St. Benedict, there were few monks in the West, and their culture was not high.⁴ That he was, however, in Holy Orders may be inferred from his knowledge of Scripture and the use of the phrase *Scitote jurisconsulti*,⁵ a form of address not usually employed by a secular lawyer towards colleagues, but suitable in the mouth of an ecclesiastic addressing laymen.⁶

Among the French Scholars of the sixteenth century the

¹ Blume, *Proleg.* to his edition of the *Collatio*, v., note 1. Pithou in his note on Title xv., chap. 3, s. v. *de terroribus*, assumes that the author was a Christian, and notes his fidelity in reproducing a Constitution against the Manichaeans² (Tit. xiv., chap. 3, § 2), which contrasts the older Roman Creed with new and strange views, and is thus a reflection, not only on the Manichaeans, but also on the Christians.

Ménage, *Juris Civilis Amoenitates*, p. 16 (1664 edition), says: *Christianum fuisse ait Cujacius, Observatt. lib. vii., cap. 2, sed nullo addito argumento. Idem ait et Bertrandus in ejus uita: probatque quod Collationem Legum Mosaicarum et Romanarum scripsit.*

² Freher (*Parerg.* i. 9): *Possit aliquis existimare Judaeum fuisse, qui cum laborare sectam suam uideret inuidia, quod disciplinā iureque a Romanis diuerso uti nosceretur, ut Cornelius Tacitus alicubi ait, Mosaicas leges, quibus Judaei utantur, ceterorum imperiorum legibus plane esse contrarias, ita ut profana sint Israelitis, quae ceteris gentibus sacra, ut Juvenal Satyra xiv.:*

"Romanas autem soliti contemnere leges.

*Judaicum ediscunt et seruant ac metuunt ius
Tradidit arcano quodcunque uolumine Moyses"*

amoli eam inuidiam studens demonstrauerit non usque adeo multum legibus Judaicis et Romanis disconuenire atque adeo ex patriis suis legibus sibiue ueluti per manus a parentibus traditis fluxisse Romanas.

³ Freher *Parerg.*, i. 9: *Ego quidem plane existimo, monachi alicuius ante Iustiniani tempora eum laborem esse: qui in Bibliothecis uiderim, a Graecis et iam hominibus similes illi compilationes legumque diuinarum cum Caesario collationes.*

⁴ Blume *Proleg. l. c.*, p. ix.

⁵ *Collat.*, Tit. vii. 1, 1.

⁶ Too much stress should not be laid upon this argument. *Scitote jurisconsulti* may be equivalent to *Sciendum est* (Tit. xiv., chap. 3, § 6). The phrase may be an imitation of the form of apostrophising their communities used by the Apostles, and which found its way into current use owing to the translation of the New Testament (H. E. Dirksen's *Hinterlassene Schriften*, ii., p. 127).

Collatio was attributed to Licinius Rufinus. Pithou, in the Prefatory note to his Edition, reports this as the view of Jean Dutillet, Bishop of St. Brieuc, and afterwards of Meaux. Pithou adds that he does not know whether Dutillet's view was conjectural or based on the authority of a Manuscript.¹ In any case, the Compiler of the Collatio, who quotes a Law of Theodosius the Great (v. 3), could not be the Licinius Rufinus who was a contemporary of Paulus.²

Charondas³ accepts the name Licinius Rufinus. So does Cujas, and assumes that it belonged to a Christian author.⁴

In a letter to Pierre Pithou, dated October 17th, 1570 (M.S. Dupuy, Paris, 700), he asks for a loan of Licinius.⁵ In his acknowledgment of the receipt of the manuscript, he says that he had instituted inquiries in three separate places for a second copy; and in a letter dated January 20th, 1571, he writes that he would very much like to see the original manuscript of the excellent Rufinus.⁵ The name Licinius Rufinus appears again in his writings, once in a letter dated February 15th, 1573; three times in the Observations, 1573, 1585, 1595. He also, however, calls the work *Lex Dei* and *Collatio Legis Judaicae*. Thus, in a letter dated April 11th, 1573, he expresses his regret that he has not yet seen a printed copy of the *Lex Dei*; and in 1579 he uses the title, *Collatio Legis Judaicae*. When, however, in 1586, he published the Collatio together with the Theodosian Code, he studiously avoided the name Licinius Rufinus.

And yet after his death, his authority was appealed to by John Bertrand⁶ for Licinius Rufinus as the author. Marquard Freher published in 1594 at Frankfurt the Lectures on Paulus' *Quaestiones*, which Cujas delivered in 1588, and reports him as having said that a Manuscript of the Collatio in a certain

¹ *Ac memini Jo. Tilium...narrare solitum, habuisse aliquando se eius operis fragmenta pauca quibus ille Licinii Rufini nomen tribuebat, an ex coniectura, an potius ex ueteris libri fide non satis scio.* (Pithou's first note.)

² *Ibid.* *Non esse Licinii Rufini cuius nomine ad Julium Paulum in libris nostris consultatio inscripta est.* [According to the Florentine Index, Licinius Rufinus was the author of Rules, in 12 books. This is clearly a mistake, as an extract from the 13th book is given in the Digest xlii. 1, l. 34. His date is fixed by an extract from Paulus' *Quaestiones*, book xii., in which his question to Paulus and the latter's answer are given.]

³ Preface dated Paris, 1572, to his edition of the Digest, published at Antwerp, 1575.

⁴ *Fuere etiam Christiani, Licinnius Rufus et Aurelius Arcadius Charisius.* Obs. vii. 2, of the year 1564.

⁵ See, for original quotations, p. xvi. note 2, in Essay I.

⁶ See note 1, to p. 1 of this Essay, and also Blume, *Proleg.*, l. c., p. 5, note 1, who quotes Bertrand's statement that the author was Licinius Rufinus, and, accordingly, a Christian.

library in Germany bore on the title-page the name Licinius Rufinus.¹ The only known German Manuscript, the Salzburg-Vienna Codex, does not contain the words Licinius Rufinus. Hence Blume dismisses the report as an idle tale, taking his stand on the fact that had Cujas known of the existence of such a manuscript, we should have had an exact description of it. Moreover, Cujas himself indicates that he was uncertain as to the name of the author.²

Still, it ought not to be forgotten that the ascription to Licinius Rufinus rests not on the authority of Freher's Report of Cujas' Lectures but on that of Dutillet, Cujas, Casaubon,³ and other scholars. The name appeared on the title page of the Geneva edition of 1586, and the Lyons edition of 1593.⁴

Notwithstanding these authorities, Gille Ménage and Anton Schulting, in the seventeenth and eighteenth centuries, have rejected the authorship of Licinius Rufinus, and have contented themselves with the negative result that nothing can be ascertained as to who was the author of the Collatio.

In our own days the name has been revived. Huschke attributes the Collatio to the Father of the Church, Rufinus of Aquileia. Huschke assumes, as already noted, that the Collatio was composed in the Eastern half of the Empire, and that its purpose was to point out to the Roman Jurists, who regarded other systems with contempt and hostility, that there was no antagonism between the Roman Jurisprudence and the Mosaic Legislation, and that the latter had indeed anticipated the former in several points.

The author must accordingly have been a Churchman, equally conversant with the Pentateuch and the writings of the Jurists. He must have composed the work after 390, as he incorporates in it a Constitution of that year. There must have been hostility between him and Jerome to account for his not taking his Scriptural quotations from the Vulgate. He must have been

¹ *Is uero L. Rufinus qui contulit leges dei cum legibus populi Romani fuit enim Christianus et illa Collatio, quae non ita dudum edita est a Petro Pithoeo, habet in quadam bibliotheca Germaniae praefixum nomen Licinii Rufini.* Quoted by Blume, *Proleg.* vi., note 2.

² By his calling the work *Lex Dei*, etc., and by avoidance of the name of the author in his edition of the Collatio. If he refers to the work as Rufinus, it is for the sake of brevity.

³ In his notes to Spartian (see Blume, vii., note 6).

⁴ The title is given as follows: *Licinii Ruffini Collatio legum judaicarum et Romanarum* (Blume, *l. c.*, p. xii.).

tolerant, for he cites a constitution of Diocletian against the Manichaeans, containing strictures against other sects also, and yet adds no word of censure on the persecuting Emperor.

The life and activities of Rufinus answer to these criteria. Born at Concordia, near Aquileia, he went to Alexandria in 371, stayed there six years, and was then a presbyter in Jerusalem, 377—397. He had a dispute with Jerome, which was composed. He afterwards returned first to Rome and then to Aquileia, where he prepared translations from the Greek, among them that of Origen's $\pi\epsilon\rho'$ ἀρχῶν, which aroused Jerome's hostility afresh. He died in 410, the year of the Gothic King Alaric's flight. These data, in Huschke's opinion, justify his identification with the author of the Collatio.

Contact during his stay at Jerusalem with the jurists of the neighbouring Roman Law School of Berytus, and knowledge of their sentiments with regard to foreign systems of Jurisprudence may have impelled Rufinus to write a comparison of Roman and Mosaic Law to show the Roman lawyers that Moses had laid the foundations on which, later on, the Romans built their wise laws.¹ His training and tastes fitted him for such a task. He was not an original writer. His works are mostly translations, and these include the Ethics of a heathen—the *Sententiae Sexti Pythagorici*. His Latin version of Origen kept him occupied with the Pentateuch, from which he cites texts not according to Jerome's Vulgate. And only a Church Father who was sufficiently liberal-minded to translate the "Sentences of Pythagoras" would have faithfully quoted Diocletian's "Constitution concerning the Manichaeans" (Title XIV., chap. 3, § 2) without adding a condemnation of that Emperor's exhortations to adhere to the old faith.

Huschke himself anticipates three objections to his theory. First, there were at the time many distinguished Churchmen called Rufinus.² To this the reply is that only the Church Father was known as an author. Secondly, the Collatio is not mentioned in the list of the works of the Church Father. The list, however, is incomplete.³ The Collatio, being only a compilation, might have escaped notice, especially as it came

¹ Introduction to the Collatio in Huschke's Edition of Ante-Justinian Jurisprudence, p. 646.

² Fontanini, *Histor. litter. Aquilensis, Libri* v., Rom. 1742. Books iv. and v. deal exclusively with Rufinus; on p. 412, six men of this name are mentioned who were distinguished in the Church.

³ Fontanini, *l. c.*, pp. 341 and 412.

to be of interest to the jurist rather than to the theologian. Thirdly, all his writings have prefaces, while the *Collatio* has none. But this is only the case with Rufinus' larger books. Moreover, in course of time, an apology against heathendom would no longer have been necessary. The preface which may have indicated such a purpose would have lost its point. Hence the preface has not been preserved.

Huschke's theory rests on the assumption that Jean Dutillet did not fix upon the name Rufinus arbitrarily, but found it in some manuscript,¹ and added Licinius, the name of a famous jurist, in order to indicate by the combination the dual character of the work. False ascriptions were, indeed, not uncommon in the Middle Ages. But this hypothesis destroys the force of the entire argument drawn from the fact that the name Rufinus is attributed to the work, for this name, too, may be fictitious. The dissimilarity of the language of the Biblical texts in the *Collatio* and the Vulgate does not help Huschke's view as to the authorship. For the quotations from the Pentateuch in Rufinus' acknowledged writings show no correspondence with the texts in the *Collatio*. Cp. Deuteronomy xviii. 10, 11 in the *Collatio* and the same text in Rufinus.² The strongest argument against Huschke's view is that the traditions of the manuscript belong to the West and not to the East. And it is incomprehensible that a work of Rufinus, whose views brought him into conflict with Jerome, should have been accepted as authoritative,³ and that at the same time its authorship should have been forgotten.

Rudorff suggests that the author of the *Collatio* was St. Ambrose, Bishop of Milan. The following are his grounds. At the end of the thirteenth, or beginning of the fourteenth,

¹ The phrase attributed to Cujas by Freher: *Habet in quadam Bibliotheca Germaniae prefixum nomen*, might thus be true.

² *Collat.* xv. 1, § 1, 2. *Non inueniatur in te . . . diuinus apud quem sortes tollas, nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. Nec intendas prodigia, nec interrogas mortuos. Non inueniatur in te augurator nec inspector auium nec maleficus aut incantator nec Pitonem (= Pythonem) habens in uentrem nec aruspex, nec interrogator (mortuorum nec portenta inspiciens.)* Rufinus, *Homil.* Origen xvi. on Numbers, § 7. *Non inueniatur in te . . . diuinans diuinatione neque sortiens sortibus, neque maleficus neque incantator neque uentriloquus neque portentorum inspector neque interrogans mortuos.*

³ As is shown by Hincmar's quotations from it. See Essay I., at the beginning, and quotations from the *Collatio* in Appendix to an Epitome of Alaric's Breviary, Cod. St. Gall. No. 722. printed in Haenel's *Lex Visigothorum*, p. 455. Cp. Rudorff, *l.c.*, p. 293 and notes.

century, the Nestorian Metropolitan of Nisibis and Armenia, Ebediesus of Soba, put together a collection of Synodal Resolutions.¹ The work consists of nine parts. In the introduction to the third part, which deals with Intestate Succession, the writer gives a historical survey of the subject. After a reference to the Œcumenical Councils at Nicæa in 325, and at Constantinople in 381, there occurs a passage rendered by Assemani as follows: *Sequiori adhuc æuo alias adiecit leges Ambrosius Mediolanensis episcopus, ab imperatore Valentiniano iussus scribere statuta et ordines iudiciorum præfectis locorum. Ex Christianis præterea principibus leges et iura scripsere Constantinus ille magnus, Theodosius et Leo idque, sicut nobis traditum est in occidente præstitere.* A closer translation by Roediger is given below.²

Rudorff's contention is that the Collection of Statutes and Ordinances which Ambrose was asked to write is the Collatio. The date of the Collatio, now accepted, is consistent with his theory. For the work would then have been published after the Œcumenical Council of Constantinople and before the Laws of Constantine and Leo, which belong to the last quarter of the fifth century. These Laws, moreover, begin with the topic of Intestate Succession with which the Collatio ends, and they

¹ Translated from the Syriac into Latin by Alois Assemani, according to two Vatican Manuscripts. *Ebediesu Decisio iurum ecclesiasticorum in Assemani's bibliotheca orientalis* III., i., p. 267. Angelo Mai, in the 10th volume of his *Scriptores*, repeated the task, using a third manuscript which Assemani had given up as lost. *Ebediesu Metropolitæ Sobæ et Armeniæ collectio canonum synodicorum ex Chaldaeis bibliothecæ Vaticanæ codicibus sumpta et in Latinam linguam translata ab Aloysio Assemano. Præcedit epitome canonum apostolicorum auctore eodem Ebédiesu in the Scriptorum veterum noua collectio.* Tom. x. Romæ, 1838.

² Roediger's translation is attested by Noeldeke as accurate (Mommson, *l. c.*, pp. 129 and 130, note 2). *Composuit deinde (leges) post hos Ambrosius, episcopus Mediolanensium, quum a Valentino [read Valentiniano] rege iussus esset ut scriberet et in ordinem redigeret iura* [Syriac, *dîne*, usually meaning *iudicia* or *statuta*] *et ordines* [Syriac *teksê* = *τάξεις*] *præfectis* [Syriac, *higēmuni* = *ἡγεμόσι*] *regionum* [Syriac, *athrawāthā*]. *Et ex regibus Christianis etiam scripserunt iura* [Syriac, *Dîne*] *et decreta* [Syriac, *pesakê*, *decisiones*] *Constantinus ille magnus et Theodosius et Leo. Et hæc quidem ut comperimus in terra occidentis.* Assemani remarks in reference to this account (*Biblia Orientalia*, iii. p. 269): *Undenam id hauserit Sobensis incertum. Leges quæ Valentiniani nomen præferunt non alia uidentur ratione Ambrosio tributæ quam quod ei æquales fuerunt et aliqua negotia iussu Valentiniani Ambrosium suscepisse ex historia ecclesiastica compertum est.* Rudorff contends that Ebédiesu was too thorough a scholar to be thrust aside lightly. His writings received canonical authority in the Nestorian Church; and though the Nestorians, since the close of the 5th century, separated themselves from the Byzantine Church, and repudiated the later legislation of the Eastern half of the Roman Empire, still, on this very account, they would be better instructed in the older sources, which they accepted as binding. Ebédiesu's report ought, therefore, not to be rejected because its source is remote.

contain a mixture of Roman and Mosaic Law like the Collatio, which they seem to have used.¹

If the Collatio is the work referred to by Ebediesu, Ambrosius could well have been its author, for he was Master of the Mosaic Law, the *ius civile* and the Constitutions, the three elements composing the Collatio.²

Indeed, the Roman sources, to which the Collatio limits itself, correspond to Ambrosius' education and career. Gaius' Institutes, the *pars de iudiciis* from Ulpian's Commentary on the Edict and Papinian's Responses, belong to the three years' course in the Roman Law Faculty. The two collections of Rescripts and the few *Extravagantes* of the later Constitutional Jurisprudence, the Citations from Paul's *Sententiae* and Ulpian's *de Officio Proconsulis*, fit in with Ambrose's special studies and his practical juristic and administrative career. The language in the six passages of the Collatio, where the compiler himself speaks, is free from rhetorical flourishes, as one would expect from Ambrose. The peculiar use of *Quia*, instead of *Quod*, is found in the writings of the Bishop.³

That Theodosius is named without fulsome titles, confirms the hypothesis that the Collatio proceeded from Ambrose, who addressed the Emperor simply as *Tua Clementia*, without adding the titles of exaggerated homage current in that age.⁴ The Biblical quotations in the Collatio and those used by Ambrose are taken from the same source.⁵ Finally the place of origin of the Manuscripts should be borne in mind. All the three Codices are of North-Italian origin. One of them is still at Vercelli, and this place is within the see of Milan.

But even the theory attributing the Collatio to Ambrose, notwithstanding its attractiveness, presents many difficulties.

The Collatio mentions Theodosius as sole Emperor (v. 3, 1). It must, therefore, have been composed not earlier than 394.

¹ The First Article: Where there are no sons, daughters succeed, as in Num. xxvii. 1-8, and Collatio xvi. 1. Agnates are preferred to cognates. Women in the third degree are to be excluded. Here the Roman element in the Collatio is incorporated. The penalties for theft, house-breaking and cattle-raiding (Arts. 77, 81, 82), and for culpa in deposit (Art. 127) are identical with the terms of the Collatio (vii. 1, 1-2; vii. 4, 1; x. 3, 1; xi. 7).

² This is proved by the letter to Paternus in 395, in which the prohibition of marriage with a sister's daughter is explained according to the three systems of law.

³ Ambros. Ep. 21, note 7, *Omitto quia iam ipse populus iudicavit: omitto quia cum quem habet, de patre Clementiae tuae postulavit. Taceo quia pater pietatis tuae quietem futuram spopondit si electus susciperet sacerdotium.*

⁴ See previous note.

⁵ Cp. Mommsen, *l. c.*, p. 130, note 3, and references in Appendix to Rudorff, *l. c.*

It is improbable that a work composed twenty years after Valentinian's death in 375 should have been written at the instance of that Emperor. Rudorff's view that the Collatio is to be connected with the co-operation between Church and State, and was intended to reassure Christian judges¹ who had qualms of conscience about the lawfulness of administering Roman Law, has no basis in Ebediesu's Report. *Pesaké* and *Diné, statuta et ordines*, to be sent to the Governors of the Provinces, do not correspond with the contents of the Collatio, a work of less technical character, and probably intended to serve as an introduction to the study of Roman Law.

The Collatio is too elementary to have proceeded from the pen of St. Ambrose, equally eminent as a bishop and a statesman. The compiler was probably an obscure clerical official practising in the Bishop's Court,² who was possibly also a teacher of Roman Law. His name, hitherto undiscovered, will, in all likelihood, always remain unknown.

¹ Cp. Ambros, *Ep. ad Studicum*, lib. vii., Ep. 58, where the bishop explains to Studicus, a state official, that he is justified in pronouncing a sentence of death, but it is praiseworthy to withdraw from the Church.

² See Muirhead, Roman Law, p. 357, "The Bishop's Court had its origin in the practice of the primitive Christians, in accordance with the Apostolic precept, of submitting their differences to one or two of their brethren in the faith, usually a presbyter or bishop, who acted as arbiter. On the establishment of Christianity the practice obtained legislative sanction." See Muirhead, *ibid.* On the Functions and Jurisdiction of this Court. Of course the Collatio, much of which deals with crimes against private individuals, was not intended for practical use in the Bishop's Court, which had no criminal jurisdiction.

FACSIMILE OF
THE BERLIN MANUSCRIPT
AND TRANSCRIPT.

INCIP LEX DIQUINESP. CAPIT.

l^{ep} dxii: moyses disacer. sh. ad. d. m.

Siquis percusserit hominem ferro & occiderit eum
moratim moratur. si autem manu lapidem
quomodo possit percusserit & mortuus fuerit ho
micida est moratim moratur. si autem inimici
tate impulerit eum uel inmisericordiam super eum aliquo
duas & infidus & mortuus fuerit uel iram per
cusserit eum manum & mortuus fuerit moratim
monetur... l^{ep} dxiii

Paulus quoque libro quinto sententiarum sub titu
lo de legem corneliae de sicariis et beneficiis dicit
l^{ex} corneliae poenam de pora & rapinis infligit qui
hominem occiderit eiusque rei causam furatue
peccandi cum celo fuerit. & qui uenenum hominis
necandi causa habuerit uel diderit parauerit
falsum uel testimonium dixerit quoque perisse
mortuusque causam presterit que omnes fecerint
re in honestiores poenae capitis uindicta placuit
humiliores uero aut in crucem tolluntur aut ^{vii}
bestis subiciuntur. l^{ep} dxiiii: ul. p. ian. lib. 10

De officio proconsulis sub titulo de sicariis
& ueneficiis capite primum legis corneliae
de sicariis occidatur ut huius preator iudex uel
questionis censor ab eo obuenit questio

INCIP LEX DĪ QUAM DŜ PRECEPIT AD
[MOYSEN].

Kp̄ DXCII. Moyses dī sacerdos hac dicit.

Si quis pcusserit hominem ferro & occiderit eum
mortem moriatur. sin autem manu lapidem 5
quo mori possit pcusserit & mortuus fuerit ho
micida est mortem moriatur. Si autē p inimici
tiā inpulerit eum uel inmisit sup eum aliquo
duas ex insidiis & mortuus fuerit uel p iram per
cusserit eum manum & mortuus fuerit mortem 10
moriatur Kp̄ DXCIII.

Paulus quoque libro quinto sententiarum sub titu
lo ad legem corneliā de sicariis et beneficiis dicit.
lex cornelia poenam deportationis infigit ei qui
hominem occiderit eiusque rei causam furtiue 15
faciendi cum telo fuerit, & qui uenenum hominis
necandi causa habuerit uendiderit parauerit
falsum ue testimonium dixerit quo quis perisset
mortis suę causam prestiterit que omnia facino
ra in honestiores poena capitis uindicari placuit 20
humiliores uero aut in crucem tolluntur aut
bestiis subiciuntur, kp̄ dxciiii: ULPIANUS LIBRO VII.

De officio proconsulis sub titulo de sicariis
& ueneficis capite primum legis cornelię
de sicariis cauetur ut his pretor iudex uę 25
questionis cui sortem obuenerit questio

Square brackets indicate words obliterated and supplied from the Editions.

Line.	Line.
1. Abbreviation of Dei is indicated by a horizontal line above word. Similarly for Deus or Dominus.	10. manum, read manu (V.).
3. Hac, read haec (W.).*	13. beneficiis = ueneficis.
5. sin:— si (V. W.).	15. causam, read causa.
7. mortem moriatur; V, has morte throughout.	18. perisset, read periret (V. W.).
	24. primum, read primo.
	25. his = is.

* W refers to the Readings in the Vienna Codex.

V " " " " Vercelli Codex.

M " " " " Mommsen's Text

... proprius millepas.
 ... cum iudicibus cui ei
 & legem ... obuenerunt de coepite eius quicu-
 celo ambulauerit hominis necandi furatius se
 cibidi causa hominē us occiderit cuius iddolum
 melo fecatum fuerit & reliqua. **l. p. d. xcv.**
 Relictis uerbis legimodo ipsi loquitur. Ulpianus
 hec lex non omnem quicumq; celo ambulauerit
 punit. sed eum tantum qui hominis necandi fur-
 atius faciendi causa telum gerit coercet conpesci.
 Item eum qui hominē occidit coercet nec colect
 cuius conditionis hominem uatē ad seruum &
 peregrinum patit. Iste hec lex uidetur.
l. p. d. xcvi. Item paulus libro quod supra &
 articulo dicit homicidā esse qui aliquo genere aeli
 hominem occidit mortuusq; causam prestatit.
l. p. d. xcvi. Item de causalibus homicidiis moy-
 ses legaliter dicit. si autē non plūmiciā et inu-
 serit supeum aliquo dūct non insidiant uel
 lepidā quomoratur non p dolum. & ceciderit
 supeum mortuus fuerit. Si autē inimicus eius
 neque quesierit male facere ei iudicabitur. Inq;
 eum qui p cussit & proximum mortui secundū
 iudicē hec & liberabitur percussorem. **l. p. d. xcvi.**
 Ulpianus libro & articulo qui supree relecto distinctione

[de sicariis eius] quod in urbe roma propriis mille pas
sus factus sit. utique erat cum iudicibus cui ei.
ex legem sortem obuenerint de capite eius qui cū
telo ambulauerit hominis necandi furtiue fa
ciendi causa hominē uē occiderit cuius id dolum 5
malo factum fuerit & reliqua. Kp̄ dxcv.

Relatis uerbis legi modo ipsi loquitur. Ulpianus
hec lex non omnem qui cum telo ambulauerit
punit. sed eum tantum qui hominis necandi fur
tiue faciendi causā telum gerit coerci conpesci, 10
item eum qui hominē occidit coercit nec aiecit
cuius conditionis hominem ut & ad seruum &
peregrinum ptinet ire hec lex uideatur.

Kp̄ dxcvi : Item paulus libro quod supra &
titulo dicit homicida est qui aliquo genere teli 15
hominem occidit mortis sue causam prestitit.

Kp̄ dxcvii. Item de causalibus homicidis moy
ses legaliter dicit. si autem non p inimicicias inmi
serit sup eum aliquod uas non insidiant uel
lapidem quo moriatur non p dolum. & ceciderit 20
sup eum mortuus fuerit. Si autem inimicus eius
neque quesierit malefacere ei iudicabitis inter
eum qui pcussit & proximum mortui secundū
iudicia hec & liberabitis percussorem. Kp̄ dxcviii
Ulpianus libro & titulo qui supra relato distinctionē 25

Line.

Line.

- | | |
|---|---|
| 1. propriis, <i>read</i> propiusue (<i>Schulting</i>) | 11. aiecit, <i>read</i> adiecit. |
| 2. factus, <i>read</i> factum. utique erat, <i>read</i>
uti quaerat; <i>for</i> cui <i>read</i> qui. | 13. pertinet ire, <i>read</i> pertinere. |
| 3. legem, <i>read</i> lege; sortem, <i>read</i> sorte. | 14. quod, <i>read</i> qui. |
| 5. dolum, <i>read</i> dolo. | 16. mortis sue, <i>read</i> mortisue. |
| 7. lege, <i>read</i> legis. ipsi, <i>read</i> ipse. | 17. causalibus, <i>read</i> casualibus. |
| 8. hec = haec. | 19. insidiant, <i>read</i> insidianter <i>or</i> insidians. |
| 10. causā, <i>read</i> causa; coerci, <i>read</i> coercet;
conpesci, <i>read</i> conpescit. | 21. Si autem inimicus eius, <i>read</i> Si autem
non inimicus eius fuerit. |
| | 25. relato, <i>read</i> relati. |

casus & uo luntate homicida
 confirmatur: h̄p de c. vii. ^{libro} de homici-
 minem occidit absoluit sol & redit non occidendi animo
 admisit & qui non occidit sed uoluit occidere pro homici-
 cida damnatur & iterumque constitui dunt & p quo
 ferro percussit ipsa funditus nam si gladium infinxit
 aut aelo percussit quid dubium est quinon occi-
 dendum animo percussit sic. lapidem percussit
 aut cucurbitam aut cum fortæ rixaretur fessus
 percussit: sed non occidendi mente ergo hoc & equi-
 tas. & si uoluntas occidendi fuit ut homicidam
 seruum supplicio cum iure jubet affici.
 h̄p de paulus libro tertio qui non occidit
 Qui hominem occidit aliquando absoluit ^{quod si}
 tur: & qui non occidit ut homicida damnatur
 Consilium autem unius cuiusque non facit impu-
 niendum est. ideoque cum uellet occidere casu
 quo ppetrare non potuit ut homicidam puniatur
 & his qui casu alij hominem imprudenter sensu
 absoluitur. quod si h̄p percussit hominem
 qm locus quoque ipso contra unumquemque
 contumplacit oportet. ideo humilior est in ludu
 aut lute & allui damnetur honestiores se
 necesse ppetrare bonorum multo capere leguntur
 h̄p de ci. Item grezorianus libro iii allegor

casus & uolun[tatis In homicidio seruari rescripto Hadriani]
 confirmatur; Kp̄ dxcviii: [Uerba rescripti et qui ho]
 minem occidit absolui solet sed si non oc[ci]de[n]di animo id
 admisit et qui non occidit sed uoluit occidere pro homi
 cida damnatur et re itaque constituendum est ex quo 5
 ferro percussit ipsa funditus nam si gladium instrinxit
 aut telo percussit quid dubium est qui non occi
 dendi animo percusserit sic, lapidem pcussit
 aut cucuma aut cum forte rixaretur ferro
 pcussit. sed non occidendi mente ergo hoc exquiri 10
 te, et si uoluntas occidendi fuit ut homicidam
 seruum supplitio cum iure iubete affici.

Kp̄ dc. paulus LIBRO TERTIO QUINTO TITULO quod sup̄

Qui hominem occidit aliquando absolui
 tur. et qui non occidit ut homicidā damnatur 15
 consilium enim unius cuiusque non factum pu
 niendum est. ideoque cum uelle occidere casu ali
 quo ppetrare non potuit. ut homicida puniatur
 et his qui casu teli hominem imprudenter ferierit
 absoluitur. quod si In rixa pcussus homo fuerit 20
 qm̄ iocus quoque ipso contra unumquemque
 contemplari oportet, ideo humiliores in ludū
 aut in metallum damnantur honestiores de
 media parte bonorum multati relegantur
 Kp̄ dci. Item Gregorianus libro iiii. ad lege 25

Line.

5. et re, *read* e re (*Edd.*). ex quo, *read*
 ecquo (*M.*).
6. ipsa funditus, *read* Epafroditus (*Blume*).
7. qui non, *read* quin.
8. sic lapidem, *read* si claue (*Digest*).
12. supplitio *read* supplicio.
12. cum iure, *read* summo (*M.*).
13. libro tertio quinto titulo quod, *M. reads*
 libro et titulo qui.
15. homicidā, *read* homicida.
17. cum uelle, *read* si cum uellet (*V., W.*).

Line.

18. puniatur, *read* punitur.
19. his = is. *After* casu *supply* iactu
 (*Paulus*).
20. fuerit, *read* perierit (*Paulus*).
21. qm̄ = quoniam. iocus, *read* ictus
 (*Digest*). ipso, *read* ipsos.
23. damnantur, *read* damnantur.
- 23 and 24. de media parte, *read* dimidia
 parte (*V.*).
25. lege, *read* legem.

beneficiis aclem.
superceator antoninus ce.
reclus militibus propter uester
reccius peccat sine presidii punitis opaulerit.
cuisipbaueit non occidendi animo iustitiae
peccatam esset remissa homicidii poenae secundum dis
ciplinam militarem sententiam proferre propositio.
pro id et februarii letiovis cons.
kip den. Item gregorius eodem titulo.
et libro octalem constitutione ponit imp alexan
der aurelio securo & ceteris militibus simodo pro quod
bellum dedistis nondolo prestat moras non minime
porresceat criminis quippe iure contrahitur & si
uoluntas occidendi intercedat ceterum iure
plerumque non nocet imputantur. pro xiii. kt. augus.
alexandro. CONS. kip den. Item gre
gorianus eodem libro et titulo.
et de rescriptum dedit quod si dnm habe agatu
kip. quod si dnm prosequi iul. antonin dementiano
nam facile commouit quippe quod ad se uere a
homicidium senon uoluntate sed casu forauit se
cisset cum ceteris iure iurum mortis occasio prestat
uideatur. quod si iure est neque super hoc ambigi
poterit omnium metu hac suspicionem quod &
admisit reidi crimine sustinet secundum id quod

[c]ornelia corneliam de sicariis] et beneficiis talem
 [constitutionem ponit] imperator antoninus ā
 [aurelio herculano et] aliis militibus frater uester
 rectius fecerit si ne presidi p̄uintię optulerit
 cui si p̄bauerit non occidendi animo iustā a re 5
 p̄cussam esse remissā homicidii poena secundum dis
 ciplinā militarem sententiam p̄ferret p̄positio.
 prid̄ k̄L FEBRU LETIO UIS CONSS.
 K̄P dcii · ITEM GREGORIANUS EODEM TITULO,
 et libro talem constitutionē ponit imp̄ alexan 10
 der aurelio fauio et aliis militibus si modo p̄ quod
 libellum dedistis non dolo prestitit mortem minime
 porrescat crimen quippe ita contrahitur et si
 uoluntas occidendi intercedat ceterum eaq̄;
 plerumque non noxę inputantur. PROP XIII K̄L AUGUS 15
 ALEXANDRO, CONS; K̄P DCIII; ITEM GRE
 GORIANUS EODEM LIBRO ET TITULO.
 tale rescriptum dedit quod si dnm̄ habe agatu
 KN̄. qualitas p̄cūm iuli antonini clementiam
 nram̄ facile commouit quippe quod adseueret 20
 homicidium se non uoluntate sed casu fortuito fe
 cisset cum calicis ictum mortis occasio preuitat
 uideatur. quod si ita est neque sup̄ hoc ambigi
 poterit omnium metu hac suspitione quod ex
 admissee rei discrimine sustinet secundum idquod 25

Line.

1. *Omit first cornelia as superfluous.*
beneficiis = ueneficis.
3. herculano, *reported by Mommsen as*
Herculario *in the MSS.*
4. si ne, *read* si se (*Just.*).
7. proferret, *read* proferet (*Just.*). pro-
positio, *read* proposita.
8. Letio = laeto. uis = bis.
11. *After Alexander supply A. (Augustus).*
fauius = Flauio. quod *read* quo.

Line.

13. porrescat = perhorrescat, et si, *read* si et.
15. *Supply before* plerumque: ex im-
prouiso casu potius quam fraude acci-
dunt fato (V., W.).
18. habe = aue. agatu = agatho.
19. KN̄ = Karissime Nobis.
20. nram̄ = nostram.
22. calicis *read* calcis. ictum, *read* ictu.
preuitat *read* praebita,
24. omnium metu, *read* omni eum metu.
25. admissee = admissae.

cedno cteatione no p...
librari. Oit pind...
maximiano. CONSS. kēp de...
et titulo quod supra. Cum quidam laetianum
causam mortis premissis comprobatum est fecerit
accurim egnata pōc uetice aduo hadriano
quodcum inquinuennium relegasset. kēp de v.
VERBA CONSOLATIONIS ET RESCRIPTI ITA SE HA
BENT. EAM INTER CLAUDIUM OPTICUM LOPP
EATEUA RISTUM COGNOUT QUOD GLEADUS LOPPIFILIUS IN
CONUIUIO DUM SEGOLACEATATUR CULPEM INEVENUECIST
ITAMELE ACCEPTUS FUERIT UT POST DIE INQUINTUM MORE
RETAR AD QUETAPCEBATA NULLA IN INVICIA CUM EBECIST
FUISSSE. N& CUPIDITATIS CULPA QUOEREBIDUM CREDEDIT
UT TETTERI EIUDEM EATECIS IUUENES EMBIDIERENTUR
I DEOQUE MARIO EUCRISTO URBERATHEC PRAMITTA UETICE
INQUINQUENNIMUM UTTER DIXU DECREUIT. R& IN PENDE CAUSA
DUOMILA PATRICIUS PSOLUTUR. EUCRISTUS QUOD MANIFEST
ATECULS FUERAT PAUPTEC UETRES. kēp de vi. VERBA
RESCRIPTI. POENANIMIAN EBECRISTI RECAE R& AM
NG MODERATECIS EST. AD MODUM CULPS REPERICEMMI
& IN MEIORIBUS DELICATIS CONSULTO ALQUIDEADIMATITUR
HANECASU. & SANE IN OMNIBUS CRIMINIBUS DISTRICTIO H&
POENAM AUT IUSTITIAM PROUOCARE DEBE&. AUT AB INPE
RAMBITUM ADMITTE&. kēp de vii.

adnotatione nos[tra] compre[hensum uolumus]
 liberari: dāt prid kl [Decemb. Diocletiano Aug iiii et]
 maximiano CONSS. Kp̄ dciiii [ULPIAN] US LIB[RO]
 ET TITULO QUOD SUPRA: cum quidam lasciuam
 causam mortis prebuisset conpbatum est factū 5
 taurini egnati proc: uetice a diuo hadriano
 quod eum in quinquennium relegasset. Kp̄ dcv.
 UERBA CONSOLATIONIS ET RESCRIPTI ITA SE HA
 BENTEM INTER CLODIUM OPTIME IMP:
 et euaristum cognouit quod gladius luppi filius in 10
 conuiuio dum sago iactatur culpam manu euaristi
 ita mele acceptus fuerit ut post diem quintum more
 retur adque adparebat nulla inimicitia cum ebaristi
 fuisset. nec cupiditatis culpā quoercendum crededit
 ut ceteri eiusdem etatis iuuenes emendarentur 15
 I deoque mario euaristo urbe italia prouintia ueticep
 in quinquennium interdixit decreuit, et impendi causa
 duo milia patri eius psolueret ebaristus quod manifes
 ta eius fuerat paupertas uel res. Kp̄ dcvi UERBA
 RESCRIPTI, poenam Mari ebaristi recte et tauri 20
 ne moderatus est admodum culpe refert enim
 et in maioribus delictis consulto aliquid admittatur
 hanc casu, et sane in omnibus criminibus distinctio hec
 poenam aut iustitiam prouocare debet. aut tempe
 ramentum admittere. Kp̄ dcvii. 25

Line.

4. quod, *read* qui. *Before* lasciuam *insert*
 per.
 6. uetice = Baeticae.
 8. consolationis, *read* consultationis.
 8 and 9, habentem, *read* habent.
 9. Clodium = Claudium. optime = optime.
 10. *For* cognouit *read* cognoui; *for* gladius,
 Claudius; *for* luppi, Lupi.
 11. culpam, *read* culpa. manu, *read* Mari.
 12. mele, *read* male.
 13. adque = atque.
 13 and 14. nulla inimicitia cum ebaristi
 fuisset, *read* nullam inimicitiam cum
 euaristo ei fuisse.
 14. nec... crededit, *M. reads* tamen cupidi-
 tatis culpa coercedum credidi (*perhaps*
it should read nec minus cupiditatis
 . . culpam coercedum credidi . .).

Line.

17. interdixit, *read* interdixi; decreuit, *read*
 et decreui; et (*before* impendi), *read*
 ut.
 18. ebaristus = Euaristus.
 19. uel res. *Huschke, following Pithou,*
reads uelis rescribere, *M., however,*
thinks that in the Archetype V R
stood as abbreviation for Uerba
Rescripti, that the full form was
afterwards inserted and that the
copyist read the retained V. R. as uel
res, which makes no sense.
 20. et, *omit.*
 21. est, *read* es; admodum *to be read as*
two words.
 23. hanc, *read* an.
 24. iustitiam, *read* iustam (*Digest*).

[modestinus libro diff]erentiarum sexto
 [sub titulo de scientibus et i]gnorantibus generalit̄
 [loquitur nonnunquam] pignorantiam delinquentib,
 iuris ciuili uenia tribui solet si modo rem pacto quis
 non iuris ignoret qui scilicet consilio delinquentibus pres 5
 tari non solet ppter quod necessarium est addita distinc
 tionem considerare utrum sciente ad ignorante ali
 quo quid gestum pponatur et reliqua. Kp̄ dcviij.

PAULUS LIBRO ET TITULO QUOD SUPRA:
 qui telum tutandę salutis causa ageret non uideatur 10
 hominis occidendi causa portare. teli autem appella
 tionem non tantum ferrum continetur. sed omnem
 quod nocendi causa portatum est.

EXPLIC : TITULUS DE SICARIIS

ET HOMICIDIS CASU UEL UO 15

LUNTATE : | ÎNCÎP DE ATROCI

Kp̄ dcviij: Moyses dicit: [INTURIA] Ex. 21.18

Si autem contenderint duo uiri et pcusserit alter
 alterum lapide aut pugno et non fuerit mortuus de
 cubuerit autem in lectulo. et si surgens ambulauerit 20
 homo fortis in baculo sine crimine erit ille qui eum
 pcusserat preter accessionis eius mercedem dabit ea

Line.

1. *First part is obliterated, seems to be cornelia cornelia, Cp. p. 5 first part, line 1.*
4. *ciuili, last s obliterated, pacto, read facti.*
5. *qui, read quae,*
- 6 and 7. *distinctionem, read distinctione.*
7. *ad read an.*
9. *quod, read qui.*

Line.

10. *ageret, read gerit; for uideatur, uidetur.*
- 11 and 12. *appellationem, read appellatione.*
12. *omnem, read omne.*
17. *inturia, read iniuria. Observe in Codex marginal reference to Scriptural text by a much later hand.*
22. *fortis, read foris (Pithou according to Septuagint),*
23. *eg, read ei.*

et medicolupensarius. k p d e x. ulpianus
LIBRO REGULARIS SUBTITULO DE INIURIIS

In iniuria siquidem atrocitas est gradum habens. et in
arbitrio gradum accipitur. atrocem autem est imago s
le repretorem adque collegi & facere ut putasi uerbe
roctus uel uulneratus fuerit & reliqua. k p d e x i.

Papianus LIBRO DE PIGNORIBUS. secundo sub titulo
de iudiciis phomine liberum noxie sedam sicutu
adquisitum sit quantum tumum dedit manum care
cogitatus est ceptore quino xcc & editu accepit. sed si du
cie iudicio non tenetur k p d e x i i.

Ulpianus LIBRO XVIII. AD EDICTUM SUBTITULO
si peccabitur iniuriam occisum esse in simplum. & cum
diceret & rupisse eum utique accipiemus quod uulneratus
uel uirgis uel uentis uel pugnis cedit uel telo cum uero uir
gine cederet hominis corpus uel tumorem percerit
uel ita de munus si dampnum daturum est. & cetero si in uulso

seruum propter uilorem deterioris us fecerit
ad aequalem cessat iniuriam que est agendum ergo
& si propter quidem non sit de aenor fecerit uir
uerum sumptus in salute eius & sanitate facit sicut in
haec nec in uideri damnum aquila legi posse;

k p d e x i i i. Paulus LIBER singulari & titulo
De iniuriis generaliter dicitur iniuriam omne quod non
iure est specieclater alia est contumelie quae

et medico impensas curationis. Kp̄ dcx. ULPIANUS
LIBRO REGULARIS SUB TITULO DE INIURIIS;

Iniuria si quidem atrox id est graui [rerum non sine iudicis]
arbitrio extimatur. atrocem autem estimare so- 5
lere pretorem adque collegi ex facto ut puta si uerbe
ratus uel uulneratus fuerit et reliqua: Kp̄ dcxi.

PAPIANUS LIBRO DEFINITIONUM: secundo sub titulo
de iudicatis phominē liberum noxię deditum si tantū
adquisitum sit quantum damnum dedit manumittere
cogendus est a pretore qui noxa et ęditū accepit. sed fidu 10
cię iudicio non tenetur. Kp̄ dcxii.

ULPIANUS LIBRO XVIII. AD EDICTUM SUB TITULO
si fatebitur iniuriam occisum esse in simplum. et cum
diceret rupisse eum utique accipiemus qui uulnerauerit
uel uirgis uel loeris uel pugnis cedit uel telo cum alio uis 15
genere cederet hominis corpus uel tumorem fecerit
uel ita demum si damnum datum est. et cetero si in nullo
seruum prętio uiliorem deterioreme uę fecerit
ad aquiliam cessat iniuriarumque erit agendum ergo
et si prętio quidem non sit deterior factus seruus 20
uerum sumptus in salute ęius et sanitate facti sunt in
haec nec mihi uideri damni aquilia lege posse.

Kp̄. DCXIII; PAULUS LIBER SINGULARI ET TITULO

De iniuriis generaliter dicitur iniuriam omne quod non
iure fit specialiter alia est contumelia quā grecia 25

Line.

2. regularis, *read* singulari.
3. graui rerum non *M. reads* graui non est,
4. extimatur = aestimatur.
5. adque = atque. collegi *or* colligi, *both in Codex.*
6. *insert* quis *before* fuerit (V. W.).
7. Papianus, *read* Papinianus.
8. noxię, *read* noxae.
9. damnum, *read* damni. manumittere = manumittere.
10. noxa et ęditū, *read* noxae deditum (W.).
13. iniuriam, *read* iniuria.

Line.

15. *for* loeris *read* loris; *for* cedit, caedit; *and for* cum, *read* quoue (Lachmann).
16. cederet *or* cederit, *read* sciderit (*Lachmann, cf. Digest, scinderet*).
17. uel, *read* sed, *and for* et cetero, ceterum.
19. ad aquiliam, *read* Aquilia.
21. salute, *read* salutem. sanitate, *read* sanitatem.
22. *before* posse, *supply* agi.
23. liber, *read* libro.
24. iniuriam, *read* iniuria.
25. grecia, *read* Graeci.

Inlunam hybndum atroxccc significare communem
 omnibus enim iunest quod sempceduersus bonos mores
 pte. idque non pum. Alcuus Interest hoc edicatum ad ex
 Inlunam ptaia que contumelie causapit. fit autem Inlu
 nam uellncor pore dum credimus uel uerbis dum conutqu
 patimur. uel cum dignitas leditur uel cum peccatone ac
 uel pte exccccc at comites adducuntur. Inluriarum acgo
 aut legitima est aut honoratice legitima & legim duo
 decim atbulcerum. qui Inlunam at ex fecit quinque & ui
 ginti restet Inlunam pona subit que legitima dafum lib
 at ex bitos seruo. Cl. pona subitior pte at qorum
 xp de xiii. Joecopaulus eodem libro singu
 leat subatitulo. quomadmodum Inlunam agatur qui
 autem Inluna in quid exccccc ceptum dicat qui Inlurie fac
 tum sit. & at exccccc ationem ponat non minorem quam
 quanta uedimonium fuerit certum. licet quis uo nomine
 demonstrat Inlunam. neque ita ut p disunctione hac
 aut illud accidisse comprehendat. sed ut ne cesset hoc beccat
 Aut unaminonum suof destituerit. Aut plurim ita
 completi ut omnes eas accidisse cogantur pbere
 ceptum autem. Inlunam diege cognito ipsius pte
 confest demonstrat. Inlunam at exccccc ationem

[adician uocant] nam dum pretor noster aduersum nos
 [pnuntiaret iniuriam] nos accepisse dicimus, unde appa
 [ret nos esse uerum] quod Labeo putabat aput pretorem
 iniuriam hybrin dumtaxat significare communem
 omnibus enim iuris est quod sempaduersus bonos mores 5
 fit. idque non fieri alicuius interest hoc edictum ad eā
 iniuriam ptinet quę contumeliae causa fit, fit autem iniu
 riam uel in corpore dum credimus uel uerbis dum conuitiū
 patimur, uel cum dignitas leditur uel cum patronae
 uel pretextote comites adducuntur. Iniuriarum actio 10
 aut legitima est aut honoraria legitima ex legem duo
 decim tabularum qui iniuriam alteri facit quinque ex ui
 ginti restertiorum poena subit quę lex generalis fuit libero
 trecentos seruo. CL. poenam subitor extertiorum
 Kp̄ dcxiiii: Idem paulus eodem libro singu 15
 lari sub titulo quemadmodum iniuriam agatur qui
 autem iniuria inquit aget certum dicat qui iniurię fac
 tum sit. et taxationem ponat non minorem quam
 quanti uadimonium fuerit certum dicit qui suo nomine
 demonstrat iniuriam. neque ita ut pdisiunctionē hoc, 20
 aut illud accidisset comprehendat. sed ut necesse habeat
 aut unam nominis suo re destinare. aut plures ita
 conpleti. ut omnes eas accidisse cogatur pbare
 certum autem an incertum dicat cognitio ipsius pre
 toris est demonstrata autem hoc loco pretor non 25

Before line 1 the following are to be supplied in the text from Justinian's Institutes (Book IV., Title IV.):—*ὁππῶν* appellant, alia culpa, quam Graeci *ἀδικημα* dicunt, sicut in lege Aquilia damnum iniurię accipitur, alia iniquitas et iniustitia quam Graeci.

- | Line | Line |
|--|---|
| 1. dum, <i>read</i> cum; noster, <i>read</i> non iure (Just.). | 13. For restertiorum, <i>read</i> sestertiorum; for poena <i>read</i> poenam; for subit <i>read</i> subito, and before last word of line supply: "fuerunt et speciale uelut illa si os fregit" (Blume). |
| 2. pnuntiaret, <i>read</i> pronuntiat. | 14. Before seruo <i>insert</i> si. subitor extertiorum, <i>read</i> subito sestertiorum. |
| 3. nos, <i>should be</i> non. | 17. For iniuria <i>read</i> iniuriarum; for inquit, inquit; for aget, agit; for qui, quid. |
| 4. hybrin, observe Greek characters in margin. communem, <i>read</i> commune. | 21. accidisset, <i>read</i> accidisse. |
| 5. enim iuris, <i>read</i> iniuriis (Lachmann). | 22. For nominis <i>read</i> nomine; for re, rem, and for destinare, designare. |
| 7 and 8. iniuriam, <i>read</i> iniuria. | 23. conpleti, <i>read</i> conplecti. |
| 8. credimus, <i>should be</i> caedimur (V. W.). | 25. demonstrata, <i>read</i> demonstrat. |
| 9. uel cum, <i>read</i> ut cum (Digest). patro-
nae, <i>read</i> matronae. | |
| 10. pretextote, <i>read</i> praetextatae (W. Blume); adducuntur. <i>read</i> abducuntur. | |
| 11. legem, <i>read</i> lege. | |
| 12. ex, <i>read</i> et. | |

noceat agere. sed qualem in corpore demonstrat
non dicit quid dicit patet. et si
item corporis demonstrat. et quod in corpore
et an fuisse an lapide sicut formula posita est. quod aut
ageri pugna molea percussa est illud non cogitur dicere
deserere censu sine. neque motu percussit. Itaque dicitur. In
fama eam se esse debet addicere. quem eodem modum in se
mota percussit. sic huius & formulae concepta est quod numedus
nigridus illum humisit aulo agerio infamandi causa;
kp dxxv. Paulus libro sententiarum sub titulo
ad legem corneliam de sicariis & beneficiis
causa mortis idonea non uidetur cum cesus homo post
aliquos dies officium diuiterne uitae regnans decessit. nisi
forte fuerit ad necem cesus aut legatarius uulneratus;
kp. iii cons: kp dxxvi. Incipit de iure & sebi iura
dominorum moyses dicit

Siquis percusserit seruum aut ancillam uirgulis & mortuus
fuerit in membris suis iudicio iudicatur quod si sup
uerit die uno aut duobus non iudicabitur periculum
ipsius est; kp dxxvii. Paulus libro sententiarum
sub titulo ad legem corneliam de sicariis & beneficiis
dicit seruus si plebs defecerit nisi idolo fideat dominus
homicidii reus non potest postulare modum suum castigan
di & inferuorum quo heri quod placuit et imperari
kp dxxviii. Ulpianus lib octauo de officio pro

uocem ageretis sed qualem [formulam edat certum]
 non dicit qui dicit pulsatum si [uerbe ratus sed et par]
 tem corporis demonstrat et qu[em in modum pugn]o pu
 to an fuste an lapidé sicut formula posita est. quod auli
 agerii pugno mola pcussa est illud non cogitur diceret 5
 dextra an sinistrā. ne qua manu pcussit ita si dicat. in
 famatum se esse debet addiceret quemadmodum infa
 matus sit. sic enim et formula concepta est quod numedius
 nigidius illum inmisit aulo agerio infamandi causa;
 k̄p̄ dcxv. Paulus libro sententiarum sub titulo 10
 ad legem corneliam de sicariis et beneficis.
 causa mortis idonea non uidetur cum cesus homo post
 aliquos dies officium diuiterne uite retinens decessit. nisi
 forte fuerit ad necem cesus aut letaliter uulneratus;
 k̄p̄ iii cons: k̄p̄ dcxvi. Incipit de iure et sebitia 15
 dominorum moyses dicit,

Si quis pcusserit seruum aut ancillam uirga et mortuus
 fuerit in manibus eius iudicio uindictetur. quod si super
 uixerit die uno aut duobus non uindicabitur pretiū enim
 ipsius est; k̄p̄ dcxvii: Paulus libro sententiarum 20
 sub titulo ad legem corneliam de sicariis et ueneficis
 dicit seruus si plagis defecerit nisi id dolo fiat dominus
 homicidii reus non potest postulari modum enim castigan
 di et in seruorum quohercitionē placuit temperari
 k̄p̄ dcxviii: Ulpianus lib octauo de officio pro 25

Line.

1 and 2, parts that are faint seem identical with similar parts, page 12, left hand side, Codex p. 163.

1. ageretis, *read* agentis. After qualem supply formulam edit certum (V. W.).

3 and 4. puto, *read* puta.

4. posita, *read* proposita.

5. mola, *read* mala; diceret, *read* dicere.

6. For ne qua *read* nec qua; for pcussit, percussa sit *and* for ita, item.

7. addiceret, *read* adicere.

8. For formula, *read* formula; for numedius, *read* numerius.

Line.

9. For nigidius *read* negidius; for il lum inmisit *read* libellum misit (M. foll owing Vonck).

11. beneficis = ueneficis.

12. cesus = caesus.

13. For aliquos *read* aliquot, *and* for diuiterne, diurnae.

15. K̄p̄ III, *probably intended by scribe to indicate* Titulus III. cons = constitutio, *but there is no reason for its presence.* sebitia = saeuitia.

20, After sententiarum, Blume inserts quinto.

24. quohercitione = coercitione.

... si dominus in
 ... carpmque uola
 ... peer asprosidu' ferescep
 to dūpū a ... mēreicēnum prouole batqce
 mēnifestatur. cuius rescripti uerba. h. p. de xiii
 Dec sunt dominorum quidā potestatem in ser
 uos suos in libeationem esse oportet nec uiquam hominum
 lussum detrahi. sed dominorum inter est ne auxilium
 contraxit utiā uel fecim' uel intolerabile in iuriam
 denegetur. his qui siliste depreceantur. ideoque cognosce
 de querellis illorum quib' familiae lulis abini cedat' et uiam
 confugerunt. & si uel durius haberi quācumque uell' se
 mis in lux' ced' fecit' cognoueris uel in lub' ut in po'z
 at' am' saūm non se uer' atentur. quod si me' constitutioni
 fr'audā fecerit scilicet me' admissum se uerius se fecit' :
 h. p. de x. Diuus & c' ad h' c' uer' u' umbram
 quendam mētrone. nec in quinquennium relegauit
 quod & leuissimis occis' ancillas carocissim' arat' :
 h. p. de xxi. Item diuus p'ius ad h' uellum al' filii
 rescripti h' c' uerba seruorum obsequium non solum
 impeno. sed & moderatone. & sufficiantib' pr'gatis &
 lustris operibus contineri oportet & itaque. & ipse curare
 debet iust' hac amperare. Quod si tractare. ut & facit
 requirere potest. nisi p'p'etuerit uell in p'cente in
 pendus esse. uel carocioram d' minacioram seueritiam.

[consulis sub titulo de domin]orum seuitias si dominus in
[seruum saeuierit uel] ad pudiciciam turpemque uiola
tionem compellat quę sint partes presidis ex rescrip
to diui pii ad aurelium marcianum ꝑconsole beticę
manifestatur cuius rescripti uerba. kꝑ dcxviii 5

Hec sunt dominorum quidem potestatem in ser
uos suos inlibatam esse oportet ne cuiquam hominum
ius suum detrahi. sed dominorum interest ne auxilium
contra seuitiam uel famem uel intolerabilę iniuriam
denegetur. his qui si iustę deprecantur. ideoque cognosce 10
de querellis illorum qui ex familia Iuli sabini ad statuum
confugerunt, et siue durius habiti quam equum uel infa
mię iniuria adfectos cognoueris ueniri iubet. ut in potes
tatem sauini non reuertantur. quod si meę constitutioni
fraudem fecerit sciet me admissum seuerius executurę: 15
kꝑ dcxx. Diuus etiam adrianus umbram
quandam matrona, nam in quinquennium relegauit
quod ex leuissimis causis ancillas atrocissime tractare
kꝑ dcxxi: Item diuus pius ad liuellum alfi Iuli
rescripsit hec uerba seruorum obsequium non solum 20
imperio, sed et moderatione. et sufficientibꝫ ꝑreuitis et
iustis operibus contineri oportet itaque et ipse curare
debet iustę hac temperare, et uos tractare. ut et facili
requirere eo possit nisi apparuerit uel inparente in
pendiis esse. uel atrociorem dominationem seuitiam 25

Line.

1. *The words in MS. Iulia de adul[teriiis] do not belong here, but to folio 163, right hand side; instead supply as above. seuitias, read saeuitia.*
2. *The words secundo uer in MS, also belong to folio 163, right hand side. pudiciciam, read inpudicitiam.*
4. ꝑconsole, read proconsulem. beticę = Baeticae.
7. *for ne cuiquam, read nec cuiquam.*
10. *qui si, omit si; iustę, omit cedilla.*
11. *illorum, read eorum. (W. Dig.)*
12. *for siue read si uel; for habiti, habitos; and after equum supply est.*
- 12 and 13. *infamię, read infami.*

Line.

13. *ueniri, read uenire; and for iubet in, iube ita ut (Digest).*
17. *matrona nam, read matronam.*
18. *tractare, read tractaret.*
20. *Before hec insert in.*
21. *sufficientibꝫ = sufficientibus. ꝑreuitis = praebitis.*
23. *for debet read debes; for hac temperare, ac temperate; for et uos, tuos (W.), and for et facili read ex facili (Lachmann).*
24. *for eo possit nisi read eos possis ne si (Pithou); and for inparente, in parente (Pithou).*
25. *atrociorem.....seuitiam, read atrociore saeuitia (Lachmann).*

acerece neceffa
contra accideat p
cedet hincendos eos compelle
kp dxxii. GREGORIANUS LIB. XVIII. sub
titulo de ecclesiasticis; Impp. diocletianus & maxi
mianus augusti aurelio seuerocaudiliaco cum seruum
caum egypti aduini grauius oppressum fecerimus
implesser pponces ppter inmoderataem castigacione
sedumme causacionem emergere innotatuer rectio
cuius fiduciam gens non pmutat. PROP. NON DECEM
DIOCLITIANO. A. III. ET ARISTONE CONS. IIII;

EXPLICIT TITULO DE DOMINORUM SEVERIANO
HIBENDA CONS. IIII; INCIPIT DE TOLTERIO
MOYSES DIXIT: kp dxxiii;

Quicumque moechatus fuerit cum muliere proximi
sui mortuam morietur quia moechatus fuerit & que
moechata fuerit quod si aliquis seduxerit uirginem
non desponsatam & stuprauerit eam docuit eam
sibi in uxorem quod si renuenerit peccat eius & noluerit
eam decere illi uxorem pecuniam inferet peccati in
que centum est dos uirginis. kp dxxiiii.

Paulus libros singularem de adulteris sub titulo bre
uiter in ter peccacionem de adulteris quo hereticis
fecit auris p pscem ceptam ipse modum ordinem
que legis seruare. & quidam primum cepit legi

exercere necesse habeat [p consul uc ne quid] tumultuosius
 contra accidat preuenire se et ex mea iam auctoritate
 ad alienandos eos compellere grauione et romulo C N S,
 Kp dcxxii GREGORIANUS Libro xviii. sub
 titulo de accusationib; Imp. dioclicianus et maxi 5
 mianus august aurelio sacrato militi cum seruum
 tuum egritudinis grauiter oppressum fati munus
 implesse pponas ppter inmoderatam castigationē
 calumne causationem emergere innotitiae ratio
 cuius fiduciam geris non pmittit PROP NON DECEMB 10
 DIOCLITIANO. ā III. ET ARISTONE CONSS IIII.
 EXpL TITULO de dominorum seuitia co
 hibenda. cons IIII. Incip de adulterio
 Moyses dixit. Kp dcxxiii:
 Quicumque moechatus fuerit cum mulierem pximi 15
 sui mortem moriatur qui moechatus fuerit et que
 moechata fuerit. quod si aliquis eduxerit uirginē
 non desponsatam et stuprauerit eam docuit eam
 sibi in uxore. quod si rennuerit pater eius et noluerit
 eam dare illi uxorem pecuniam inferet patri in 20
 quantum est dos uirginis. Kp dcxxiiii.
 PAULUS libro singularis de adulteris sub titulo bre
 uem interpretationem de adulteris quohercendis
 facturur pipsam capitam ire maluit ordinem
 que legis seruare. et quidem primum caput legis 25

Line

2. After auctoritate add te (Lachmann).
3. grauione et romulo, read Glabrione et Homullo.
5. dioclicianus = Dioclitianus.
6. August = Augusti.
7. After tuum supply ui.
9. causationem, read accusationem, and for innotitiae, innocentiae.
11. aristone, read aristobulo, and omit IIII.
12. titulo, read titulus.

Line

13. cons IIII. Cf. page 19, line 17, where Kp indicates titulus.
15. mulierem, read muliere.
17. eduxerit, „ seduxerit.
18. docuit, „ dotabit (W. following Septuagint).
22. singularis, „ singulari.
23. interpretationem; after this, Huschke adds legis Iuliae. quohercendis = coercendis.
24. pipsam capitam should be per ipsa capita. maluit, read malui.

... pluribus cerebrogata
 ... peccat filicessus quas
 ... at in eaque auatore cum in po
 ... effect uero in mano conuenerit adulterum do
 ... usque deprehendens inquam eam semo
 ... um occidit. uat his peccat cum adulterum sine
 ... fraude occidit, tunc filicem incontinenti occidit
 ... inuidia uat filicem qui adulterum deprehensum occide
 ... & incontinenti filicem herosus hoc peccatum;
kp dcxxv. MARCELLUS libro xxxi. Digestoni
 ... occidit peccat quoque peccat posse interficere
 ... uel cons uerum uel peccat suum in filiam adu
 ... deprehendens eodem libro MARCELLUS pbat.
 ... sed si filicem non interfecerit. sed solum adulterum
 ... homicidii reus est. sed inter uellum filicem interficere
 ... unde est. nisi si sequatur ille interfecerit
 ... continuationem huius animi uidetur legis auatori
 ... fecisse? **kp dcxxvi.** Ideo PAULUS eodem
 ... libro & titulo cerat autem enumerantur
 ... quas ueroliceat occidere in adulterio depre
 ... hensem uxorem. quamuis uxorem non liceat ego
 ... secundum leges uero & iam filio semel ex pmit
 ... cur & iam de misus deprehensum adulterum in
 ... cer pice reseruum & eum qui auatorum huius roga
 ... est eod gladium uel & iam illum qui opstrassus.

[iulię de adulteris prioribus] legibus pluribus abrogat
[secundo uero capite pmittit] pater filias suas quas
[in potestatem habet] ut in ea quę auctore cum in potes- 5
tate esset uero in mano conuenerit adulterum do-
mui suę generiue sui deprehenderet in quem eam rem so-
cerum adhibuerit. ut his pater cum adulterum sine
fraude occidat ita ut filiam incontinenti occidat
inuidia autem filia qui adulterum deprehensum occide-
rit. et in continenti filiam licito iure hoc factum :
Kp̄ dcxxv. marcellus libro xxxi. digestorū 10
scribit auctoritate quoque pater posse interficeret
uel cons uerum uel patronum suum in filiam adulte-
rium deprehenderit eodem libro marcellus pbat.
sed si filiam non interfecerit. sed solum adulterum
homicidii reus est. sed interuallum filiam interfecerit 15
tant unde est . nisi psequatur illam interfecerit
continuationem enim animi uidetur legis auctori-
tatis fecisset; Kp̄ dcxxvi: Idem Paulus eodē
singulari libro et titulo certę autem enumerantur
psonę quas uero liceat occidere in adulterio depre- 20
hensam uxorem. quamuis uxorem non liceat ergo
secundum leges uero etiam filio familias pmitti
tur etiam domi suę deprehensum adulterum in-
terficere seruum et eum qui auctoramento roga-
tus est ad gladium uel etiam illum qui operas suas 25

Line.

1. iuliae de adul[teris] *regarded by M. as an interpolation.* abrogat, *read* obrogat (*Scaliger*).
2. pater, *read* patri; *insert before* filias suas quas, si in, *and read* filia sua quam.
3. potestatem, *read* potestate; *for ut read* aut, *and supply* eo before auctore.
4. uero, *read* uiro; *for* mano, manū.
5. in quem, *read* ius in.
6. his = is; cum, *read* eum.
8. inuidia, *Huschke reads* in uidua, *but M.* in sui iuris.
11. *After* auctoritate quoque *add* legis (*Cujas*); pater posse interficeret, *read* patrem posse interficere.

Line.

12. cons, *read* consularem; uerum, *read* uirum; *for* in filiam, adulterium *read* in filia adulterum, *and before* in *insert* si eum (*Huschke*).
15. sed interuallum, *read* et si interuallo; interficerit, *should be* interfecerit.
16. tant unde, *read* tantundem.
17. continuationem, *read* continuatione.
- 17 and 18. auctoritatis, *read* auctoritate.
18. fecisset, *read* fecisse.
20. uero = uiro.
- 20 and 21. deprehensam uxorem, *read* deprehensa uxore.
22. uero = uiro.
23. etiam domi, *M. omits* etiam.

ut cum beatis purgatur. **De adulterio**
necum licet interficere. **De adulterio**
tinum uel suum uel paternum. **De adulterio**
quem leatimum. sed & pateris & matris & filii & filie libertati
punitur occidere quod loco. & deditus habere etiam debet
autem pater. tunc apud eum culus iurisdictio est eo loco ubi occi
dit. & uxor in dimittitur. quod si non fecerit in punitur non
interficiet. secundum est autem diuum marcum & commodum
descriptis eum quicquid alterum inlicita interfecerit le
uon. poenam punit. sed & mox nus antoninus peperit
etiam quicquid alterum in consulto caelo & ducti interfecerunt
& relique: **lp de xxvii**; **Idem paulus** eodem
libro singulem & articulo: Quis iure in urbe uel pateris qui
accusat potest & sine calumnie poena una si iure & trans ac
cusat potest calumnie & poena punit. sed tamen post duo mē
ses. intra quos tuos menses uales & parat licet accuset qui
alia accusare non possit ut liber unus aut minor uel utriusque
que annorum aut infra menses tamen accusationem admitti
tur ut & papianus libro xx scripsit: **lp de xxviii** **Pap**
ianus libro xv responsorium. Sub titulo ad legem lul
iam de ad uicinis cuius romanus qui sine conuicio sibi pere
grinam in maius momo. habuit licet quidem marcia
adulteram non postulat sed etiam non pone tunc infam
ia uel quod liberati non remissis tunc tunc tunc tunc tunc
autem non habuit punitur in lura persequenti;

ut cum bestiis pug[naret locauit sed et iudicio publico dam]
 natum licere interficere in adulterio deprehensum uel liber]
 tinum uel suum uel paternum [et tam ciuem romanū]
 quam latinum. sed et patris et matris et filii et filiæ libertū
 pmittitur occidere quo loco. et deditius haberetur debet 5
 autem p[ro]fiteri apud eum cuius iurisdictio est eo loco ubi occi
 dit et uxorem dimitteret. quod si non fecerit impune non
 interficit. sciendum est autem diuum marcum et commodū
 rescripsisset eum qui adulterum inlicitę interfecerit le
 uiori poenam puniri. sed et magnus antoninus pepercit 10
 eas qui adulteros inconsulto calore ducti interfecerunt
 et reliqua: Kp̄ dcxxvii: IDEM PAULUS EODEM
 libro singulari et titulo; Qui iure marti uel patris qui
 accusat potest, et sine calumnię poena uinci si iure extranei ac
 cusat potest calumnię poena puniri. sed tantum post duo men 15
 ses. intra quattuor menses utiles experitus licet talis sit qui
 alia accusare non posit ut libertinus aut minor uiginti quin
 que annorum aut infamis tamen accusationem admitti
 tur ut et papianus libro xv scripsit; Kp̄ dcxxviii. Papi
 anus libro xv responsorum; Sub titulo ad legem iuli 20
 ani de adulteris ciuis romanus qui sine conuiuio sibi pere
 grinam in matrimonio habuit iure quidem mariti eā
 adulteram non postulat sed ea non opponetur infami
 a uel quod liberatinus rem sextertiorum treginta miliū
 aut filium non habuit p[ro]priā iniuriā persequenti; 25

Line.

1. *At end of line in MS.* deo seruabat is
foreign matter.
2. licere, *read* licet.
5. deditius = dedititiu haberetur, *read*
habetur.
7. dimitteret, *read* dimittere
9. rescripsisset, *read* rescripsisse. inlicitę.
omit cedilla.
10. poenam, *read* poena.
11. eas, *read* eis (*Huschke*). or si (*W*)
13. marti, *read* mariti.
15. tantum; *M* has tum,

Line.

16. experitus, *read* expertus.
17. alia, *read* alias. posit = possit.
- 19 and 20. Papianus = Papinianus.
- 20 and 21. Iuliani, *read* Iuliam.
21. *After* qui *M.* adds ciuem Romanam.
conuiuio = connubio. sibi, *read* siue
(*M.*).
22. iure *read* iure.
23. ea, *read* ei.
24. sextertiorum = sestertiorum. treginta,
e for i.

Paulus libro singulari et titulo

[qui supra in] uxorem adulterum uindicatur iure mari
 ti [non etiam spon]sam seuerus quoque et antoninus ita
 rescripserunt. Kp̄ dcxxx, PAPIANUS LIBRO
 singulari, de adulteris querebatur an pater emancipa 5
 ta filiam iurę patris accusare possit respondit occi
 dendi quidem facultatem lex tribuit eam filiam quā
 habet in potestatem aut eum auctorem in manū conue
 nit. sed accusare iurę patris. ne quidem emancipatum
 filiam pater phibetur; Kp̄ dcxxxı. PAPIANUS EODĒ 10
 singulari et titulo: Cum patri lex regia dederit in filiā
 uite, nechisque potestatem quod bonum fuit legem con
 prehendit, ut potestas fieret etiam filiam occidendi
 uelle mihi rescribere, nam scire cupio respondit, num
 quid ex contrario prestat nobis argumentum. hec adiec 15
 tio, ut non uideatur lex non habenti dedisse ut uidea
 tur maiorem equitatem ductus adulterum occidis
 set, cum nec filię pepercerit. Kp̄ dcxxxıı;
 Idem si pater qui adulterum occidit et filię sue
 pepercit quero quid aduersus eum sit statuendum, 20
 respondit, sine dubio iste pater homicida est. igitur
 tenebitur legem corneliam, de sicariis plane si filiam
 non uolūtate patris. sed casu seruata est, non minimā
 habebit defensionem pater quod forte filiam. nam
 lex ita ponit homicidam. si dolo malo homicidium 25

ine.

2. qui *missing in MS.*
2. adulterum, *read* adulterium.
- 5 and 6. emancipata, *read* emancipatam.
6. respondit, *read* respondi.
8. *After* aut *supply* quae; eum auctorem.
read eo auctore.
9. emancipatum, *read* emancipatam.
10. *After* eodē *add* libro.
11. et titulo, *M. regards as an interpolation.*
12. nec hisque, *read* necisque, and *for* legem
lege.
- 12 and 13. comprehendit, *read* comprehendi.

Line.

14. uelle, *read* uelis (*Cujas*).
16. *After* dedisse *M. supplies* sed occidi
eam cum adultero iussisse.
17. maiorem equitatem, *read* maiore aequi-
tate.
- 17 and 18. occidisset, *read* occidisset.
19. qui, *read* quis.
22. legem corneliam, *read* lege Cornelia.
23. uolūtate = uoluntate.
24. *After* forte *supply* fugit; filiam, *read*
filia.
25. ponit, *read* punit.

peccatum fuisse. **l. de p. m. c. de p. m. c. de p. m. c.**
p. h. c. m. quicquid uoluisse. **l. de p. m. c. de p. m. c.**

l. p. de xxiii. Papianus idem. **l. de p. m. c. de p. m. c.**
Xin sicem in c. d. u. t. t. n. o. de p. h. h. s. u. m. occidit. an in lege
deficanis incidit. quere. respondit. nulli peccare legi
m. c. h. a. d. u. x. o. s. e. m. occidere se conceditur. quere. a. p. c. e.
a. c. o. n. t. r. a. l. e. g. i. s. p. e. c. i. s. s. e. u. m. non dubitatur. non an
h. i. c. i. t. u. r. s. e. d. s. i. d. e. p. o. n. e. a. t. r. a. c. a. t. u. r. non hisque aliquid em
h. o. n. e. s. t. i. m. o. c. a. d. o. n. p. i. n. i. a. t. e. a. t. u. r. ambiguit. si dicit. non
dubitat. it. n. o. n. q. u. i. s. i. h. o. m. i. c. i. d. a. p. o. n. i. t. u. r. c. a. p. i. t. e.
u. e. l. d. e. p. o. r. a. t. i. o. n. e. s. e. d. u. s. q. u. e. c. a. d. e. t. t. u. m. p. o. e. n. c. e. u. s. s. t. a.
a. u. t. u. r. **l. p. de xxiii.** I. n. s. i. d. e. m. a. n. c. i. p. i. s. a. l.
t. e. n. u. s. i. n. c. e. n. a. t. o. u. e. l. p. e. c. c. a. t. e. a. c. c. u. s. a. n. t. e. q. u. e. s. t. i. o. n. i. n. h. a.
b. l. a. n. d. e. m. p. e. c. c. a. n. e. s. s. e. a. n. i. d. e. m. s. e. c. t. r. a. c. e. n. o. a. c. c. u. s. a. t. o. r. i.
p. m. i. a. t. i. s. d. e. b. e. a. t. q. u. e. r. o. r. e. s. p. o. n. d. i. t. p. o. t. e. s. t. i. u. d. e. r. i. g. a.
r. a. t. i. o. f. u. i. s. s. e. p. m. i. a. t. i. n. d. i. i. s. t. i. s. p. s. o. n. i. s. d. e. i. t. u. r. q. u. e. s. t. i. o.
n. o. n. h. i. c. e. b. e. r. e. u. a. d. i. l. i. g. e. n. t. i. u. s. d. o. l. o. r. d. e. m. a. n. i. m. i. s. u. i. l. a. e. m.
i. n. l. u. n. a. m. l. e. g. e. d. o. m. u. s. n. o. n. t. r. a. n. s. l. o. c. a. t. i. s. p. s. e. q. u. e. s. t. i.
a. u. r. s. e. d. q. u. i. n. o. n. f. a. c. i. l. e. a. c. c. e. d. e. l. e. g. a. m. s. i. n. e. m. i. n. i. s. t. r. o.
r. e. u. o. r. u. m. a. d. i. n. i. a. t. i. s. c. r. e. d. i. t. u. m. e. s. t. r. a. t. i. o. s. o. p. d. u. x. i. t.
u. a. b. l. i. c. e. m. s. e. c. t. r. a. c. e. n. o. a. c. c. u. s. a. n. t. e. m. a. n. c. i. p. i. a. q. u. e. s. t. i. o. n. i.
a. o. r. m. i. n. o. r. u. m. s. u. b. i. c. e. r. e. n. t. u. r. a. l. i. u. d. i. c. i. b. u. s.

l. p. de xxv. Paulus liber sententiarum
sub titulo. De adulteris. p. m. i. t. t. u. r. a. m. a. d. o. p.
e. t. n. o. q. u. e. m. c. e. d. u. l. t. e. r. d. e. m. c. u. m. f. i. l. i. e. c. u. i. u. s. q. u. e. s. t. i. o. n. i.
e. t. n. o. q. u. e. m. c. e. d. u. l. t. e. r. d. e. m. c. u. m. f. i. l. i. e. c. u. i. u. s. q. u. e. s. t. i. o. n. i.

factum fuerit. hic au[tem pater non ideo seruauit]
 filiam quia uoluisset qui oc[cidere eam non potuit.]
 Kp dcxxxiii. Papianus idem si maritus uxo
 rem suam in adulterio deprehensum occidit. an in lege
 de sicariis incidit quero respondit. nulla parte legis 5
 marito uxorem occidere conceditur. quare apar
 te contra legem fecisset eum non dubitantur. non am
 bicitur. sed si deponat tractas. non hisque aliquid eius
 honestimo calori pmittetur ambigitur. sic dicit. non
 dubitantur, ut non quasi homicida poniatur capite 10
 uel deportatione; sed usque ad exitium poena eius sta
 tuitur. Kp dcxxxiiii Item sic de mancipiis al
 terius marito uel patre accusante questionem ha
 bendam palam esse an, idem extraneo accusatori
 pmitti debeat quero respondit potest videri ea 15
 ratio fuisse pmittendi istis psonis de seruis questio
 nem habere. ut diligentius dolorem animi sui item
 iniuriam lex et domus non translatitię psequeren
 tur, sed qm non facile tale delictum sine ministerio
 seruorum admitti creditum est ratio eo pduxit 20
 ut etiam extraneo accusante mancipia questioni
 tormentorum subicerentur a iudicibus.
 Kp dcxxxv. Paulus liber sententiarum
 sub titulo, de adulteris pmittitur tam adop
 tiuo quam adulterom cum filia cuiusque digni 25
 tatis

Line.	Line.
2. uoluisset, <i>read</i> uoluit, <i>and add</i> sed, <i>reading</i> qui as quia.	9 <i>and</i> 10. ambigitur.....dubitatur, <i>omit</i> (V. W.).
3. Papianus, <i>M. omits</i>	10. poniatur = puniatur.
4. deprehensum, <i>read</i> deprehensam; <i>for</i> lege, legem.	11. exitium. <i>read</i> exilium.
5. incidit, <i>read</i> incidat.	11 <i>and</i> 12. statuitur, <i>read</i> statuatur, <i>and for</i> item idem.
6 <i>and</i> 7. aparte, <i>read</i> aperte; <i>for</i> fecisset, fecisse.	12 <i>and</i> 13. alterius, <i>read</i> alterutrius (V. W.).
7 <i>and</i> 8. <i>Omit</i> non dubitantur; ambicatur, <i>read</i> ambigitur.	14. esse, <i>read</i> est (Schulting).
8. deponat, <i>read</i> de poena, <i>and for</i> hisque, <i>read</i> inique (Müller).	18. lex et, <i>read</i> laesae (W.).
9. honestimo, <i>read</i> honestissimo; <i>for</i> pmittetur, permittitur.	23. liber, <i>read</i> libro: <i>after</i> sententiarum, <i>supply</i> secundo (M.).
	24 <i>and</i> 25. <i>After</i> permittitur <i>add</i> patri (Paulus), <i>and after</i> quam, naturali (V. W.).

...sum suam manu occide
 ...quam incedulo deprehendit
 ...legis preest ut non possit occide
 re punitur. tam si etiam elut occideat in
 cedulo deprehensos non celos quam in
 m... & in corpore questum faciunt servos
 & in celos & deprehensos quam in celos occi
 de potest manatus qui uxorem deprehensum cu
 cedulo occidit quic hoc in peccentia lufidoloni
 ced misit laus punitur placuit occiso adultero dunt
 cepe stratum meretur debet uxorem in quiete an
 duoprimo punitur cum quo adultero & in quo loco
 uxorem deprehendit in uentam adulterio ux
 rem meretur lufidoloni cedulo meretur
 occideri potest si eam domui sue deprehendat
 eum quic adultero deprehensum uxori non fec
 erit dimiserit reum lenocini postulat placuit
 seruato tamquam uxori in causa adulteri
 corqueri possunt. nam hostes sub specie in puni
 reas deatrem uidebitur & pl. tit. l. o quinto
 in ep. de stupratoribus moyses dicit
 de xxxvi. l. p. de xxxvi. Qui manserit
 cum masculo in consensu male hinc spernabitur
 est in bono monatur reus. l. p. de xxxvii.

leuit. 20. 13.

Paulus libro sententiarum in libro titulo

[domi suę uel generi sui depre]hensum sua manu occidere
 filiū familię [pater si] filiam in adulterio deprende
 rit uerbis quidem legis ppe est ut non possit occide
 re pmittitur tamen etiam ei ut occidat mari
 tus in adulterio deprehensos non alios quam infa
 mes. et eos qui corpore questium faciunt seruos
 etiam et liberos excepta uxore quam phibetur occi
 dere potest maritus qui uxorem deprehensum cū
 adultero occidit quia hoc impacientia iusti doloris
 admisit leuius puniri placuit occiso adultero dimit
 tere statim maritus debet uxorem atque ita tri
 duo pximo pfiteri. cum quo adultero, et in quo loco
 uxorem deprehenderit inuentam adulterio uxo Lib. 2, Ti. 26.
 rem maritus ita demum adulterum maritus
 occidere potest. si eum domui sue deprehendat
 eum qui in adulterio deprehensam uxore non sta
 tim dimiserit reum lenocinii postulari placuit
 serui uero tam mariti quam uxoris in causa adulterii
 torqueri possunt. nec his libertas sub specie inpun
 tatis datam ualebit Kp EXPL TITULO QUINTO
 INCIP DE STUPRATORIBUS MOYSES DICIT
 DCXXXVI, Kp dçxxxvi: Qui manserit
 cum masculo mansionem muliebri aspernamentū
 est ambo moriantur rei sunt. Kp dcxxxvii
 PAULUS LIBRO SENTENTIARUM SUB TITULO

Line.

Line.

- | | |
|---|---|
| 2. familię, <i>read</i> familias. | 13. <i>Observe in Codex marginal reference to Paulus, by a later hand.</i> |
| 6. questium, <i>read</i> quaestum. | 15. sue, <i>cedilla omitted.</i> |
| 7. liberos, <i>read</i> libertos (<i>Pithou</i>). | 19. specie = specie. |
| 8. maritus, <i>read</i> maritum, and for depre-
hensum, deprehensam. | 20. datam, <i>read</i> data, <i>observe marginal reference by later hand.</i> |
| 13 and 14. inuentam . . . uxorem, <i>read</i> in-
uenta . . . uxore, and <i>insert</i> in before
adulterio. | 22. <i>Observe in Codex marginal reference to Biblical quotation by later hand.</i> |

de cecidit enim qui in aeternum
 coepit puniri qui uolunt
 qui impurum peccatur dimidie pariter honorum possum
 multat. nec est membra ei & maiore peccat
 cere. hoc quid in luy est mentem accendi legitimus
 Imperatoris theodosii constitutio ad plenum secum cognoscit
 hō d c xxxviii. Iam theodosianus iopp ualens
 Theodosius & archadius auct. adonemum uicariū
 bis romae non pati amur in bis romae uir tantum omniū
 maritandi uicariū esse minan. Inuitos pudoris contamina
 tione foedari. ita est illud ad prius conditoy bis robur
 fractum molliat plebe ten uicium conuicium seculi uel
 conditorum. Inrogare uel pignori pueri. orienti.
 hō d c xxxviii. Nunc uo uis laudanda igitur & pe
 nitia tuam omnes quibus plagi. tiolus luxis est uincor
 pur muliebriat. constitutum. ceteri sexus decernere
 peccantia. nihilque discretum habere cum feminis
 occupatos ut plagi. tiolus innocentes eodque om
 nibus seductos pud. dicere uirorum. Inponenbus spā
 atem populo flamme undici bus & piabrat unius si
 intellegat sacrosos cunctis esse debere hospiciū uis lram
 me nec sine summo supplicio alienum. petisse. sexum qui
 suum uirpus. perdidit & pōp pōd maria rōme. Inaio
 minere. expt. a. aulo. de supratoy bus. hō d c xl.
 Inap. de incestu. Inuitalis moyses dicit. Quicūque

L. c. 23. l. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

Leuit. 20. 11
 Deut. 22. 27

de adulteris qui mascul[um liberu]m inuitum stup[rauerit]
 capite punietur qui uolunt[ate sua stuprum flagitium]
 que impurum patitur dimidia parte bonorum suorum
 multatur. nec testamentum ei ex maiore parte fa
 cere licet hoc quidem iuris est mentem tamen legis Moysi 5
 Imperatoris theodosii constitutio ad plenum secuta cognoscit
 Kp̄ dcxxxviii. item Theodosianus Imp̄p̄ Ualentianus
 Theodosius et archadius augḡ ad orientium uicarium ur
 bis romę non patiamur urbis romae uirtutem omniū
 matrem diutius effeminati in uiros pudoris contamina 10
 tione foedari et ageste illud ad priscis conditoribus robur
 fracta molliter plebe tenuatum conuicium seculi uel
 conditorum. inrogare uel printipium orienti;;;;;
 Kp̄ dcxxxviii ac iuc̄ NOUIS Laudanda igitur expe
 rientia tua omnes quibus flagitiosus luxus est uiri cor 15
 pus muliebriter constitutum alieni sexus damnare
 patientia nihilque discretum habere cum feminis
 occupatos ut flagitii possit inmanitas adque om
 nibus seductos pudet dicere uirorum lupanaribus spec
 tante populo flamme uindicibus expiabit ut uniuerſi 20
 intellegant sacros̄c̄is cunctis esse debere hospicium uirilisi
 me nec sine summo supplicio alienum exp̄tisse; sexum qui
 suum turpiter perdidisset pr̄op̄ pr̄id̄ maias rome in atrio
 minere Expt̄ titulo de stupratoribus. Kp̄ d̄cxi,

Incip̄ de Incestis Nuptiis Moyses dicit: Quicūque 25

Line

Line

6. cognoscit, [^]read cognoscitur.

7. ualentianus = Ualentinianus.

8. archadius = arcadius. augḡ, read augḡ.

9. patiamur, read patimur; for urbis
romae uirtutem read Urbem Romam
uirtutum.

10. uiros = uiro.

11. ageste = agreste; ad for a.

12. seculi, read saeculis.

13. printipium, read principum.

14. iuc̄ NOUIS = iuc(undissime) nobis.

15. L. 6 C. Th., lib. 9, Tit. 7, sed non adeo
integer on margin by a later hand.
uiri, M. reads uirile.

17. patientia = patientia.

18. possit, read poscit. adque = atque.

19. seductos, read eductos.

20. flamme, cedilla wanting.

21. sacros̄c̄is = sacrosanctis, read sacro-
sanctum.

22. anime, cedilla wanting, read animae.

23. rome, cedilla wanting, read Romae.

24. minere, read Mineruae.

Line 25. Levit. xx. 4; Deut. xxii. 22, on margin by a later hand.

uxorem peccatissimam pu
 reit. & quicumque concubuerit cum nuptus
 moratim morantur. Ambo
 moratim morantur. Ambo eis sunt
 lxx de xli. Ulpianus libro regulari denup
 tui sub titulo. Inter peccantes & liberos cuius
 cumque gradus sit concubium non est inter cognec
 tos autem & transuerso graduolum quidem usque
 cedatque cum gradu matrimonia contrahi non pote
 rant nunc autem & tercio gradu licet uxorem ducere & factum
 cum fratre filia non tam sororis nec amitam nec mat
 ram quam uis eo dem gradu sit. eamque nouerca
 uel prugna uel que nuptus uel sororis futurorandu
 cere non possumus si quisdam quam non licet uxorem
 duxerit. Incestum matrimonium contrahi ideo
 que liberis in potestate eis non sunt. sed quasi
 uulgo conceptis pugnifunt. lxx de xlii.

Paulus lib. sententiarum. denuptus sub titulo
 Inter peccantes & liberos licet civiliter matrimonium
 contrahi non possunt. nec filiam sororis. aut nep
 tem uxorem ducere non possumus. per patrem & matrem
 & cognatos & adoptivos cognatio impedit nuptias
 Inter peccantes haec liberos omnimodo inter fratres
 exatibus quaeatibus ceptis minutio non inter
 uenit. nec socrum nec nuptum prugnam. nec

[concubuerit] cum mulierem uxorem patris sui pu
[denda patris sui de]textit mortem moriantur, ambo
rei sunt, et quicumque concubuerit cum nuru sua
mortem moriantur ambo rei sunt

Kp̄ dcxli. Ulpianus LIBRO Regulari de Nup 5
TIIS SUB TITULO. Inter parentes et liberos cuius
cumque gradus sit conubium non est inter cogna
tos autem ex transuerso gradu olim quidem usq 3
ad quartum gradum matrimonia contrahi non pote 10
rant nunc aut ex tercio gradu licet uxorem ducere sed tan
tum fratris filia non etiam sororis nec amitam nec mat
terram quamuis eodem gradu sint. eamque nouerca
uel priuigna uel que nurus uel socrus fuit uxorem du
cere non possumus si quis eam quam non licet uxorem
duxerit incestum matrimonium contrahit ideo 15
que liberis in potestate eis non fiunt. sed quasi
uulgo concepti spurii sunt. Kp̄ dcxlii.
Paulus liber sententiarum. de nuptiis sub titulo
inter parentes et liberos iure ciuili matrimonia
contrahi non possunt. nec filiam sororis. aut nep 20
tem uxorem ducere non possumus p̄neptę etatis.
ratio p̄hibet adoptiua cognatio impedit nuptias
Inter parentes hac liberos omnimodo inter fratres
eatenus quatenus capitis minutio non inter
uenit. nec socrum nec nurum priuignam, nec 25

Line

1. mulierem uxorem, *read* muliere uxore.
5. regulari, *read* Regularum singulari.
- 5 and 6. de nuptiis sub titulo, *transpose*
to sub titulo de nuptiis.
7. sit, *read* sint.
11. filia, *read* filiam.
- 11 and 12. mätterram, *read* materteram.
12. eamque = eam quae.

Line

16. liberi, *read* liberi, and for eis, eius
(Ulpian).
18. liber, *read* libro; after sententiarum
add secundo, and *transpose* de nup-
tiis sub titulo to sub titulo de nuptiis.
21. Omit non.
23. hac = ac.
25. Before priuignam insert nec.

non recte reliquendo. ~~non recte~~
non ducere hoc. sicut nō. ~~non recte~~
sed uel cognoscere contrahitur dicam ducit
remissio mulieris lussu et ore ipsa poenā adultera
legis lussu peccatur. non licenducem. **l. p. de x. l. iii.**
Cregorius libro quinto de uirtutibus. sub titulo de
pluribus uirtutibus diocletianum & maximiā imp
et eam coniunctionem grauitatē puniri conuincit
l. p. de l. iii. Exemplum edicte diocletianum & maxi
mianū noui. nimirum ceteram quāpā religioſis
quem dicitur huiusmodi. eoque romanis legibus ceteris
et quāpā contrite uenerabili maxime uidet
tur. et quāpā. nō religioſe seruanda diſſimulat
et quāpā. et quibusdā lussu et carum nesciens inerte
que commissasunt non oportet credere eum uel
colubendū sunt uel dicitur uindictā de lussu et
non diſciplinā nostrorum temporum colubendū
ita dicitur et ipsos. Inmar et deus. romanononum
ut sūp fuerit. puenit et quāpā pleccatōs pū
rū esse non dubium est. sicut et ceteris sub imperio nō
gētes pūem religioſas quāpā et quāpā. et quāpā
omnibus more coleſe pūpōerimus. utam in quod
et ampuddidum quam maxime esse etiam in
maximā nō religioſas et quāpā legitime lussu et
diſciplinā lussu ueteris copulcat et in gōrum

nouercam aliquando [citra] poenam in[cesti uxo]
 rem ducere licet, sicut nec amitam [aut materteram]
 sed uel cognatam contra interdictum duxerit
 remissio mulieris iuris errore ipse poenam adulterii
 legis Iulia patitur, non etiam ductam Kp̄ dclxiii. 5
 Gregorianus libro quinto de nuptiis, sub titulo exem
 plum litterarum dioclitiani et maximiani imp̄
 talem coniunctionem grauiter puniri commemorat
 Kp̄ dcliiii: exemplum edicti dioclitiani et maxi
 miani nouissimorum cesarum qm̄ piis religiosis 10
 que mentibus nr̄is eaque romanis legibus castę sanc
 tęque sunt contitute uenerabilia maxime uidē
 tur adque ęterna religione seruanda dissimulare
 ęaque a quibsdā in preteritum nefarię incestę
 quę commissa sunt non oportere credimus ęum uel 15
 cohibenda sunt uel etiam uindicanda insurgere
 non disciplina nostrorum temporum cohortatur
 ita enim et ipsos inmortales deos romano nomini
 ut semp fuerint fauentes adque placatos futu
 rus esse non dubium est si cunctos sub imperio nro 20
 gentes piam religiosasque et quietem et castum in
 omnibus more colere perspexerimus uitam in quo id
 etiam puidendum quam maxime esse censuimus. ut
 matrimoniis religiose adque legitime juxta
 disciplinam iuris ueteris copulatis tam ęorum 25

Line.

3. *After* sed *supply* qui affinem.
4. remissio mulieris *read* remisso mulieri (V. W.).
5. ductam, *read* ducta,
6. de nuptiis sub titulo, *transpose* to sub titulo de nuptiis.
8. puniri, *read* punire.
9. dioclitiani = Diocletiani.
10. nouissimorum, u *for* b.
11. nr̄is = nostris. eaque = ea quae: castę sanctę, *faulty cedillas*.
12. contitute, *read* constituta, maxime *faulty cedilla*.
13. adque = atque.

Line.

- 14 *and* 15. *faulty cedillas in following words*: ęa (in ęaque), nefarię, incestę, quę, ęum. 14 quibsdā = quibusdam; preteritum = praeteritum.
15. ęum, *read* cum (V. W.).
17. non, *read* nos (V. W.).
19. fuerint, *read* fuerunt.
- 19 *and* 20. futurus, *read* futuros.
21. *for* gentes, *read* agentes (V.); religiosasque, religiosamque (V. W.); quietem, quietam (W.); *and for* castum, castam.
22. more, *M. writes* mere, *Huschke* more maiorum.
23. maxime, *faulty cedilla*.

in coniunctione secantur
 deinceps seruatque religione
 nescitur incipere esse consuetum & honesto
 ac nec edidi & incompotentes ipse purgatus sit.
 idem publici nostri maxime placeat ut scilicet
 nec assiduum nominis optineant apud aspec
 tuosus piecem hac religiosam consanguinitatem de
 bitam euertere nescimus credere est exque
 in preteritum & compluribus constare esse commissi
 cum peccatum hac serarum promiscuo rruat in
 ciat conubia in fine autem perinde libidinissime
 ullo respectu pudoris hac piecem inuenerunt.
 sedque cumque ante hac uel in penam delinquenti
 um uel ignorantia uisibiles bonos in humanitat
 ricum & in heris in matrimonium fundantur admissa
 quamquam essent seuerissimis iudicandi eam
 contemplatione eis in heris nris ad indulgentiam
 uolumus pertinere; itaque ut quicumque in
 ante acutum tempus in heris in heris que semina
 criminis polluerunt hac tenus adeptos esse
 nam indulgentiam sciunt. ut post acumen facio
 facinororum quidam sibi gratulentur esse con
 cessos sciunt tam non legitimos se suscepisse libe
 ros quod tam nesciunt coniunctione gesserunt
 itaque si & uale futuro quoque nemo audeat
 in effrenatis cupiditatibus obediunt cum & sciam
 hic precedentes admissores istius modicissimi
 ulniam liberos ut liberos quod in heris

[honestatum qui nuptiarum] coniunctione sectantur
 quam [etiam his qui] cum deinceps seruata religione
 nascetur incipiat esse consultum et honesta
 te nascendi etiam posteritas ipsa purgata sit
 id enim pietati nostrę maxime placuit ut scę 5
 necessitudinum nomina optineant apud afec
 tos suos piam hac religiosam consanguinitatis de
 bitam caritatem nefas enim credere est ęaque
 in preteritum a conplurib; constat esse commissa
 cum pecodum hac ferarum promiscuo ritu ad inli 10
 cita conubia instinctum exercendę libidinis sine
 ullo respectu pudoris hac pietatis inruerint.
 sed quęcumque antehac uel inperitiam delinquen
 tium uel p ignorantia iuris barbaricę inmanitatis
 ritum ex illicitis matrimonii si uidentur admissa 15
 quamquam essent seuerissemę uidicanda tam
 contemplatione clementię nrę ad indulgentiā
 uolumus ptinere, ita tamen ut quicumque in
 ante actum tempus illicitis incestisque se ma
 trimoniis polluerunt hactenus adeptos se esse 20
 nrām indulgentia sciat ut post tam nefaria
 facinora uitam quidem sibi gratulentur esse con
 cessā sciant tamen non legitimos se suscepisse libe
 ros quos tam nefaria conjunctionē genuerunt
 ita enim fiet ut de futuro quoque nemo audeat 25
 inefrenatis cupiditatib; oboedire cum et sciant
 ita praecedentes admissores istius modi criminū
 ueniam liberatos. ut liberorum quod illicitae

Line.

1. *For* honestatum *read* honestati; con-
iunctione, coniunctionem.
2. cum, *M. writes* inde.
3. nascetur, *read* nascentur.
5. scę = sanctae, *read* sancta (*Cujas*).
- 6 and 7. affectos, *read* affectus.
7. hac = ac; consanguinitatis, *read* con-
sanguinitati.
8. ęaque = ea quae.
9. preteritum = praeteritum.
10. pecodum, *read* pecudum; hac = ac.

Line.

11. instinctum exercendę, *read* instinctu
execrandae (*Schulting*).
12. hac = ac.
13. inperitiam, *read* inperitia.
15. ritum, *read* ritu; matrimonii si, *read*
matrimoniiis (*V W.*).
16. seuerissemę = seuerissime. uidicanda,
read uindicanda. tam = tamen.
24. conjunctionē, *read* coniunctione.
26. inefrenatis, *M. has* infrenatis.
28. *For* ueniam *read* uenia; *for* quod, quos.
illicitae, *read* illicite.

genuerunt successione ca[reatur quae iuxta uetusta]
 tem romanis legibus negabat[ur e]t optassemus qui
 dem negante quicquam eius modi esse commissam qd
 esse aut clementia remittendum aut legibus corri
 gendum. sed et posthanc religionem sc̄itatem quę in co 5
 nubiis copulandis uolumus ab unoquoque seruari, ut se
 ad disciplinā legesque romanas meminerint ptinere
 et eas tantum sciant nuptias licitas que sunt roma
 no iure pmissę cum quibus autem psonis tam cognata
 torum quam ex adfinium numero contrahi non 10
 liceat matrimonium hoc edicto nostro complexi
 sumus cum filia neptę p̄neptemque matre abia phabię
 et ex latere amita hac matertera sororis filia. et
 ex ea nepte itemque ex adfinibus preuigna nouerca 15
 socrus norus ceterisque quę antiquo iure prohibentur
 a quibus cunctos uolumus abstinere nihil enim nisi hanc
 tantum hac uenerabile^s nostra iura custodiunt, et ita
 ad tantum magnitudinem romanam gesta cunc
 torum non mirum fabore puenit qm̄ om̄s leges sua re
 ligione sapienti pudorisque obseruatione deuinxit, 20
 quare hoc edicto nro uolumus omnibus palam fieri
 quod preteritorum uenia p clementiam nram contra
 disciplinam uidetur indulta ad ea tantum delicta
 ptineat que in diem tertio KL Ianuariorum tusco et
 anulio cons̄s. uidentur esse commissam, si qua autem 25
 contra romani numinis decus sc̄itateque legum
 post supra dictum diem deprehenduntur admissa
 digna seueritatem plectentur. nec enim nullum

Line.

1. careatur, *read* arceantur (*Puteanus*).
3. negante, *read* nec ante (*V. W.*).
4. esse, *read* esset.
5. post hanc, *read* post hac; sc̄itatem = sanctitatem; quę = que.
8. eas = eas. que, *read* quae.
12. neptę, *read* without cedilla. pronepte, *read* pronepte itemque (*W.*). abia = auia. phabię, *read* proauia.
13. hac = ac.
14. preuigna, *read* priuigna.
15. socrus, norus, *read* socru nuru.
- 16 and 17. hanc tantum, *read* sanctum (*Puteanus*).
17. hac = ac, uenerabiles, *read* uenerabile.

Line.

18. romanam gesta, *read* romana maiestas (*V. W.*).
19. For non mirum, *read* numinum (*Puteanus*, cf. *V. and W.*). sua, *read* suas (*V. W.*). For fabore, fauore. qm̄-quoniam; om̄s = omnes.
22. After uenia, *add* quae (*V.*).
24. tertio, *read* tertium.
25. anulino, *read* Anullino. commissam, *read* commissa.
26. numinis, *read* nominis. sc̄itateque = sanctitatemque.
27. deprehenduntur, *read* deprehenduntur.
28. For seueritatem, *read* seueritate; for nullum, ullum.

sequi quum secum & ubi in se con
sequi possent quicquid eundem cymen & post edicam
nisi non dubitarent infuere. Dicitur manus damasco
ausca & cono hno consti. lxxv de xlv

Ermodianus sub titulo. Denuptis imp. diocle-
tus & maximianus aggr. pt. flouiano his qui incestu
nuptias per rorē contrahunt. nepoenis subiciantur
tracatum elemētia principum subuenit. si postea
quē errorē suum rescierint. ille conseruatur nup
tias dirimerint. p. p. id m. r. & dioghe cons.

lxxv de xlv. Hanc quoque constitutionē gregor
anus titulo. Denuptis inseruit quē est aricesima
& secunda celsitatem & die. id est tam stratio p. p. uict
lun. diocletiano c. r. & maximiano. augustis.

lxxv de xlv. papianus l. l. singulari. Decebat
rur quē sororis filiam uxos induxerat per rorē an
tequam pueniretur & delectore dirimit cohitum
quē conced huc possit accusari. respondit. & qui con
luncat sororis filie bona fide abstinuit potest conse
micit. p. d. c. m. est quia qui errorē cognito distinet
corum creditur eius uoluntatis fuisse. ut si scisset
in eo necessitudinis gregio positum non fuisse. talē ma
tymonium copulaturus. lxxv de xlviii.

Idem dicitur in eos qui incestus nuptias contraxerunt
maledicti tatem h. sunt omnes incestus p. lege cum. do
huc rudibus populi & diuino nōto condita isdm abst
pulantib. sanciretur & utique omis maledicti punitis
quos diuina & humana sententia conseruauerunt.
lxxv de xlviii.

in ta[m nefario sce]lere quisquam extimet ueniam se con
sequi posse qui [tam] euidenti crimen et post edictum
nr̄um non dubitabit infuere. dāt KŁ maias damasco
tusco et anolino const, Kp̄ dcxlv

Ermogenianus sub titulo de nuptis Im̄p̄p. dioclitia
nus et maximianus agg. FŁ. flauiano his qui incestas
nuptias p̄ errore contrahunt. ne poenis subiciantur
ita demum clementia principum subuenit, si postea
quam errorem suum rescierint ilico nefarias nup
tias dirimerint. prop. id̄. mart. et diogene cons. 5
Kp̄ dcxlvī: hanc quoque constitutionē gregori
anus titulo. de nuptiis inseruit que est tricesima
et secunda aliis tam et die. id est constitutio prop. v id̄
Iūn. dioclitiano ter et maximiano augustis 10
Kp̄ dcxlvīī: papianus lib̄ singulari. de adulte
ris que sororis filiam uxorem duxerat p̄ errorem an
tequam pueniretur a delatore dirimit cohitum
quero an adhuc possit accusari respondit, et qui con
iunctę sororis filię bona fide abstinuit poenam re
mittere. palam est quia qui errorem cognito diremit 15
coitum creditur eius uoluntatis fuisse. ut si scisset se
in eo necessitudinis grado positum non fuisset talē ma
trimonium copulaturus: Kp̄ dcxlvīīī: 20
Idem dicitur in eos qui incestas nuptias contraxerunt
maledicti tamen sunt omnes incestis p̄ lege cum ad 25
huc rudibus populis ex diuino n̄to condita isdem absti
pulantib; sanciretur, et utique om̄s maledicti puniti sunt
quos diuina et humana sententia consona uoce damnavit
lex diuina sic dicit

Line.

1. extimet = aestimet.
2. crimen, *read* crimini,
3. infuere, *read* inruere (V. W.).
4. anolino, *read* Anullino.
5. Ermogenianus, *read* Hermogenianus.
6. agg = augg.
6. fŁ = flauio.
10. dirimerint, *read* diremerint. prop id
mart = proposita idibus Martiis. *After*
mart, *read* Tiberiano (V. W.). diogene,
read Dione (V. W.).
12. que = quae,

Line.

13. *After* et die *insert* et cons (V. W.).
- 13 and 14. prop V id Iun. = proposita V idus
Iunias.
16. que = qui. perorem = per errorem.
17. cohitum = coitum.
- 18 and 19. coniunctę, *read* coitu (M.).
20. errorem = errore. dirimit = diremit.
22. grado = gradu.
25. incestis, *read* incesti. lege, *read* legem.
26. noto *or* nuto, *read* nutu.
- 26 and 27. abstipulantib; = adstipulantibus.

lex de clauis. maledictus qui concubuerit
Quiconcubuerit cum uxore in pace & fuerit in pace
populus fiat & fiat. maledictus qui concubuerit
cum sorore sua de peccato & concubuerit & concubuerit
omnis populus fiat & fiat. maledictus qui concubue-
rit cum uxore sua. & concubuerit omnis populus fiat & fiat
maledictus qui concubuerit cum sorore sua. & concubuerit
omnis populus fiat & fiat. maledictus qui concubuit
cum sorore in pace sua. & concubuerit omnis populus fiat & fiat
maledictus qui concubuerit cum sorore in pace sua
& concubuerit omnis populus fiat & fiat. maledictus qui con-
cubuerit cum sorore uxoris sue. & concubuerit omnis po-
pulus fiat & fiat; maledictus qui dormierit cum
uxore fratris sui. & concubuerit omnis populus fiat & fiat
maledictus qui dormierit cum omni peccato & concubuerit
omnis populus fiat & fiat. **Expl. i. r. v. l. o. d. e. t. o. u. l.**
aceris super rationibus & inestis **lex de cl.**

In cap. de furtis & de poena eorum. Quod si duode-
cim tabularum nocturnum furem autem si se
aut tello defendit & interfici iubent scitote unum
consulti. quia moyses prius hoc fecerat sic & c. o
mne fecerat moyses dicit. si p. f. o. d. i. b. i. s. n. o. c. e. p. a. u. r.
e. a. t. m. i. n. u. l. t. u. s. f. u. e. r. i. t. f. u. r. e. m. p. c. u. s. s. e. r. i. t. e. u. m. a. u. t. &
m. o. r. t. u. u. s. f. u. e. r. i. t. h. i. n. o. n. e. s. t. h. o. m. i. c. i. d. a. h. i. s. q. u. i. p. e. c. c. o. s.
s. e. r. i. t. e. u. m. s. i. a. u. t. e. n. s. o. l. o. r. a. u. s. s. u. p. e. u. m. r. e. u. s. e. s. t.
m. o. r. t. i. p. c. u. s. s. o. r. & i. p. s. e. m. o. r. t. u. u. s.

lex de cl. paulus libro seminum v.
ad legem cornelium de sicariis & bene facis:

Kp̄ dclxviii. Maledictus inquit dixit Moyses
 Q̄ui concubuerit cum uxorem patri sui et dicit omnis
 populus fiat fiat. Maledictus qui concubuerit
 cum sorore sua de patre aut de matre et dicit
 omnis populus fiat fiat. maledictus qui concubue
 rit cum nura sua, et dicit omnis populus fiat fiat 5
 Maledictus qui concubuerit cum socrus sua, et dic
 omnis populus fiat fiat: maledictus qui concubuerit
 cum sorore patris sui. et dicit omnis populus fiat fiat
 Maledictus qui concubuerit cum sorore matris suę 10
 et dicit omnis populus fiat fiat: maledictus qui con
 cubuerit cum sorore uxoris suę et dicit omnis po
 pulus fiat fiat: maledictus qui dormierit cū
 uxore fratris sui, et dicit omnis populus fiat fiat,
 Maledictus qui dormierit cum omne pecore, et dīc 15
 omnis populus fiat fiat, , . EXPL̄ TITULO de adul
 teris stupratoribus et incestis Kp̄ dcl:

Īncip̄ de furibus et de poena eorum. Quod si duode
 cim tabularum nocturnum furem autem si se
 aut tello defendere interfici iubent scitote iuris 20
 consulti. quia moyses prius hoc statuit si cui leccio
 manifestat moyses dicit. si pfodiens nocte pari
 etem inuentus fuerit furem pcusserit eum alius et
 mortuus fuerit hi non est homicida his qui percus
 serit eum. si autem sol ortus sup eum reus est 25
 morti pcussor et ipse morietur;
 Kp̄ dcli: PAULUS LIBRO SENTENTIARUM V̄,
 ad legem corneliam de sicaris et beneficiis:

- Line.
 1. inquit = inquit.
 2. uxorem, *read* uxore. patri, *read* patris.
 3. Deut. 27, *on margin by a much later hand*.
 6. nura *for* nuru.
 7. dīc = dicit.
 15. omne *for* omni.
 16. Expl̄ = explicit, titulo, *read* titulus.
 19. *After* furem *Blume* adds quoquomodo, diurnum.

- Line.
 19 *and* 20. si se aut tello, *read* si se audeat tello (*Schulting*),
 21. si cui, *read* sicut (V.). leccio, *read* lectio.
 22. Exod. 22. 2, *on margin by a much later hand*.
 23. furem, *read* fur et.
 24. hi, *read* hic (V.); his = is.
 25. *After* ortus *add* fuerit.
 26. morti, *read* mortis (W.).
 28. beneficiis = ueneficis.

Siquis puerum occiderit nullum vel diurnum cum sceleris deſtin
dere occiderit hocce quidem lege non teneatur ſed melius
fecerit quia nec comprehenſum a quaſiſima actum ad
preſentem magiſtratus opulenti lxxviii.

Cl. prius libro viii ad edictum in ceteris
Siquis eſt opus pauperem occiderit in lumen occiſum. Si
mentis actetur non dum ſufficit occiſum ſed poſtea
in lumen reſiſſetiam unde ſiquiſſerunt lætione
occiſiſſe lege æquiliæ non teneatur quia non occidit
ſed ſiquicumque alium ferroſiſſetiam quioccidit
non indebitur in lumen occiſiſſe. p inde ſi uſum nocetur
num quilibet duodecim ætate ætatem omnimodo pmit
tia occidere aut diurnum quem æquiliæ pmitte
ſed ætate domi ſi ætate deſendatur ætate ætate ætate
æquiliæ necetur & potius potius dubit lxxviii.

Nunc huius non ſi in uſu & ſiquis in ea uſum occiderit
non dubia annis quilibet æquiliæ teneatur ſi in uſu
compoſitæ ætate p henderet meclut occideret magiſſet in
in lumen p eſſe unde ætate ergo & ætate ætate ætate
bitur in lumen ætate ætate ætate ætate ætate ætate
ad modum & ætate in lumen ætate ætate ætate ætate
æetate ætate ætate ætate ætate ætate ætate ætate
ſic ætate ætate ætate ætate ætate ætate ætate ætate
æetate ætate ætate ætate ætate ætate ætate ætate

Cl. prius libro octavo De opprobriis p conſulis
ſub ætate ætate ætate ætate ætate ætate ætate ætate
ſunt diurni in ea ætate ætate ætate ætate ætate ætate
cognitæ ætate ætate ætate ætate ætate ætate ætate
æetate ætate ætate ætate ætate ætate ætate ætate

si quis furem nocturnum uel diurnum cum se, telo defendere occiderit hac quidem lege non tenetur. sed melius fecerit qui eum comprehensum transmittendum ad presidem magistratib3 optulerit. Kp dclii.

ULPIANUS LIBRO VII AD EDICTUM SUB TITULO 5
si quadrupes pauperiem dederit iniuriam occisum esse merito adicitur, non enim sufficit occisum. sed oportet iniuriam. id esse factum. p̄inde si quis seruū latronē occiderit lege aquilia non tenetur quia non occidit, sed et quicumque alium ferro se petentem qui occiderit 10 non uidebitur iniuria occisisse. p̄inde si furem nocturnum quem lex duodecim tabularum omnimodo p̄mittit occidere aut diurnum quem eaque lex p̄mittit sed ita lex demū, si se telo defendatur uideamus an legē aquilia teneatur. et Pomponius dubitat. Kp dcliii. 15

NUNC hec lex non sit in usu et si quis noctu furem occiderit non dubitamus quin lege aquilia teneatur. sin autem cum posset ad p̄hendere maluit occidere magis est. ut iniuria fecisse uideatur ergo etiam lege cornelia tenebitur iniuriam autem accipere hic nos oportet. non quem 20 admodum et circa iniuriam actionem contumeliam quandam. sed quod non iure factum hoc est contrarius, id est si culpa quis occiderit et reliqua. Kp dcliiii :

ULPIANUS LIBRO OCTAVO : DE OFFICIO PCONSULIS
sub titulo de furib3 Fures ad furtum remittendi 25
sunt diurni coctornique extraordinē audiendi et causa cognita puniendi dum poena eorū sciam/ operis publici temporariū modum non egrediendū , , ,

- Line.
1 and 2. defendere, *read* defenderet.
5. *on mar. in.* l. 1. 3 ad l. Aq. *reference to Digest ix. 23, by later hand.*
6. iniuriam, *read* iniuria.
8. inuriam, *read* iniuria.
9. *After quia Blume supplies* iniuria.
10. quicumque, *read* quemcumque (*Digest*).
11. occisisse, *read* occidisce.
13. eaque = aequae (*Cujas*).
14. *lex omit*; *for* defendatur, *read* defendat;
for legē, lege.

- Line.
16. nunc, *read* num (*W.*).
17. *After aquilia supply* non (*Digest*).
18. Ad p̄hendere, ad p̄hendere.
21. iniuriam, *read* iniuriarum.
25. furtum, *read* forum (*noted in margin of MS: by later hand*).
26. coctornique, *read* nocturnique.
27. dum, *read* dum modo (*Digest*).
sciam/= sciamus.
28. temporariū, *read* temporari (*Digest*).

l^o dcl.v. Ideo & in hoc ne quis fuit
fures defraudant uel defraudatores uel defraudatores
nec quidquam percusserunt metelli poenae humiliores
honestiores uero re legatione adficiuntur

l^o dclvi. paulus liber senatus in titulum
titulo. De furtis fuit quocumque genere ad manum
fecimus efficiatur fur est quis in alio loco contrec
atque fur aditum genere sunt quatuor manifesti. nec
manifesti concepti. & oblati manifestus fur est. qui
in furtivo deprehensus. & in reatibus manifestus locum
defraudatus est comprehensus. uel ante quam ad eum
locum destinatus esset peruenit. nec manifestus est
fur qui in reatibus quidam comprehensus non est.
sed cum fecisse negat non potest concepti actione
trahatur apud quos furcum est inuitum oblati
actione huius tenetur quis in furtiuam optulit ne
apud se inuitum fur fuit actionem huius agere potest.
Culpa inter est rem non perisse concepti actionem
agere potest quis in concepti & inuitum oblati agere
potest probet quibus concepti inuenta est.
expt. titulus de furtis. Incipit de falso
testimonio moyses dicit

Deut 19

l^o dclvii. Siste accuset in iustis aduersus homi
nem accusandum accusans eum impietatis facit
duo homines quibus est inuicem contumptio autem
accuset sacerdos. & iudices. quicumque fue
runt in illis diebus cum inquisierint iudices de
genere. & in iustis fuerit accuset in iustis facit

Kp̄ dclv. Ideo et in balneariis furibus sed si se telo
fures defendunt uel efractores uel ceteris miles,
nec quemquam pcusserunt metalli poenas humiliores
honestiores uero relegatione adficiendi erunt:
Kp̄ DCLVI. PAULUS LIBER SENTENTIARUM SUB 5
TITULO, de furibus furti quocumque genere damnatus
famosus efficitur fur est qui rem alienam contrec
tat furtorum genera sunt quattuor manifesti, nec
manifesti concepti, et oblati manifestus fur est. qui
in faciendo deprehensus ~ et intra terminos eius locum 10
defuratus est conprehensus est, uel antequam ad eum
locum destinauerat puenerit, nec manifestatus est
fur qui intra rapiendo quidem conprehensus non est,
sed eum fecisse negari non potest concepti actione
tenetur aput quem furtum est inuentum oblati 15
accione his tenetur qui rem furtiuam ali optulit ne
aput se inueniretur furti accionem his agere potest.
cuius interest rem non perisse conceptiua autem
agere potest qui rem concepit et inuenit oblate agere
potest poenes quem res concepti inuenta est: 20
EXPL TITULUS DE FURIBUS. INCIPIT DE FALSO
TESTIMONIO MOYSES DICIT
Kp̄ dclvii. Si steterit testes iniustus aduersus homi
nem accusandum accusans eum impietatis stabunt
duo homines quibus est inuicem contemptio ante dñm 25
et ante sacerdotes, et ante iudices, quicumque fue
rint in illis diebus cum inquisierint iudices dili
genter, et in uentus fuerit testis iniustus testificans

Line.

Line.

- | | |
|---|---|
| 1. ideo, <i>read</i> idem. | 13. intra rapiendum, <i>read</i> in rapiendum. |
| 2. efractores, <i>read</i> effractores; ceteris miles, <i>read</i> ceteri his similes (<i>Dig.</i>). | 16. accione, <i>ci</i> <i>for</i> ti. his = is. |
| 3. poenas <i>for</i> poena. | 17. his = is. |
| 5. <i>After</i> sententiarum <i>add</i> II (Index). lib. 2 Tit. 31 (<i>reference to Paulus</i>) <i>on</i> margin <i>by later hand</i> . | 19. oblate, <i>read</i> oblati. |
| 10. <i>The mark</i> ~ = est; <i>after</i> et <i>add</i> qui; <i>for</i> locum <i>read</i> loci. | 20. poenes = penes. concepti <i>for</i> concepta. |
| 11. defuratus, <i>M. has</i> unde furatus. | 21. exp ^t = explicit. |
| 12. <i>After</i> locum, <i>read</i> quo. manifestatus, <i>read</i> manifestus. | 3. testes <i>for</i> testis. Deut. 19, 16 (<i>Biblical reference</i>) <i>on</i> margin <i>by later hand</i> . |
| | 25. contemptio, <i>read</i> contentio. dñm = domi-num. |

lib. i. cap. i. si quis falsum fecerit ei sicut uolunt
 necesse est ut delectissimum de medium uestrum
 & ceteri audientes timebunt nec uidebunt haec male
 fecerit huiusmodi: **h. p. d. cl. viii:** paulus liber gen
 gulari de poenarum omnium legum sub titulo ad legem
 hanc de adulteris qui falsum testimonium dixerint
 unde etiam dicitur haec si lege corneliae testimonium
 dixerint poenae essent. **h. p. d. cl. viii:** paulus liber senat
 quod sum quinto sub titulo de testibus & de quaestio
 nibus si quis falsum uel aliquod testimonium dixerint uel
 utriusque pariter perdidit aut in alium aguntur
 aut in unum solum sequebantur aut eum submouetur
h. p. d. cl. v: Idem libro ad legem cornelianam
 de sicariis & beneficiis lex corporalis poenae de por
 tationis inquit et qui hominem occiderit eiusque
 corpus fuit atque faciendi cum aelo fuerit & qui ue
 nenum hominis necandi causa habuerit uendiderit
 peremerit falsum uel testimonium dixerit quoque
 poenae moratissae causa impetraverit quae omnia si
 ei innoxiae in honestiores poenae acceptis iudicibus reple
 cur humiliores uero aut in eum tolluntur aut be
 tioribus subiciuntur: **h. p. d. cl. xi:** paulus liber senat
 tiorum v. sub titulo ad legem cornelianam testimonii
 poenae in quibus falsum testimonium phibendum pr
 euenire accipit dederit ludicam ut ut sententia
 ferret uel non ferret corruerit corrumperendum
 ut curauerit humiliores excepte puniuntur honest
 iores publicae bonis cum ipso ludicam in unum solum
 deponantur

lib. i. cap. 7.

[iniusta insurgentes aduer]sus eum facietis ei sicut uoluit
mal[e]fa[ce]r[e] et deletis malum de medium uestrum
et ceteri audientes timebunt nec audebunt hec mala
facere inter uos : k̄p̄ dclviii : PAULUS LIBER SIN
gulari de poenis omnium legum sub titulo ad lege iu 5
liam de adulteris qui falsum testimonium dixerint
p̄inde tenebitur hac si lege cornelia testamentaria
damnatus esset. k̄p̄ dclviii : PAULUS liber senten
tiarum quinto sub titulo de testibus et de questionib3
hi qui falsum uel aliqua testimonia dixerunt, uel 10
utriusue parti p̄diderunt aut in exilium aguntur,
aut in insulam relegantur aut curia submouetur,
k̄p̄ dclx : IDEM LIBRO AD LEGEM CORNELIAM
de sicariis et beneficis lex corporalia penam depor
tationis infligit ei qui hominē occiderit eiusque rei 15
causa furtique faciendi cum telo fuerit. et quie
nenum hominis necandi causa habuerit uendiderit
parauerit falsum ue testimonium dixerit quo quis
periret mortis suę causam prestiterit que omnia fa
cinora in honestiores poena capitis uindicare pla 20
cuit humiliores uero aut in crucem tolluntur aut bes
tiis subiciuntur : k̄p̄ dclxi : PAULUS LIBER SENTEN
tiarum V, sub titulo ad legem corneliam testamen
taria hii qui ob falsum testimonium phibendum pe
cuniam acciperit dederit iudicem uę ut sententiā 25
ferat uel non ferat corruperit corrupendum
uę curauerit humiliores capte puniuntur hones
tiores publicatis bonis cum ipso iudicem in insulam
deponantur

Line.

2. deletis, *read* delebitis, medium *as* medio.
4. Liber, *read* libro.
5. lege, *read* legem.
6. dixerint, *read* dixerit.
7. hac *for* ac.
8. liber *for* libro.
9. lib. 5, tit. 15 (*reference to Paulus*) on margin by other hand.
10. falsum uel aliqua, *read* falso uel uarie (*Paulus*).
11. utriusque, *read* utrique (V. W.).
13. After libro M. supplies sententiarum quinto sub titulo. lib. 5, et Tit. 23 (*reference to Paulus*) on margin by later hand.

Line.

14. beneficis=ueneficis; *for* corporalia *read* cornelia (V. W.); *for* penam poenam.
15. infligit *for* infligit.
16. furtique, *read* furtiue.
19. suę, *read* ue (W.). que = quae.
20. uindicare, *read* uindicari.
22. Liber, *read* libro. Tit. 25 (*reference to Paulus*) on margin by later hand.
- 23 and 24. testamentaria, *read* testamentariam.
24. hii, *either omit or (as Huschke) read* is.
27. capte = capite.
28. iudicem, *read* iudice.
29. deponantur, *read* deportantur (*Paulus*).

l. p. de l. xii: Idem eod. de l. xii. si quis
 quidquid in ueritate non est sed in
 l. p. de l. xiii. Ulpianus sub titulo de poena legis cor-
 nelie testimonium perhibere l. viii. p. de re a. fac. cum est
 senatus consultum fructilio. & cetero consulibus. quo
 poena legis cornelie inrogatur ei quidquid aliud quam
 testimonium scitis signauerit signauerit uel curauerit.
 l. p. de l. xiiii: Item quod falsis testes rationes
 fecerit & testimonium uel falsum uel non dictum
 aut consignandum dolomelo curauerit l. h. m. v. & cetero
 ro cons. l. p. de l. xv: Item quod obstruenda uia
 uoce actionem testimonium uel pecuniam acceperit pactis
 uel fuerit societatem coherere. aut aliquam delatio-
 nem interposuerit. l. p. de l. xvi: Item si quis cohe-
 rit ad occisionem innocuum senatus consulto quod
 cocae & messellae peccatum est cohercentur. sed & si quis
 obstruendum uel detinendum non permittit
 uel testimonium pecuniam acceperit senatus con-
 sultum quod duobus. g. l. m. i. cons. fructum sit poena
 legis cornelie adficatur. & reliqua. VIII: Item mo-
 der. falsum testimonium non debet coqueri suspen-
 tum: l. p. de l. xvii: Ulpianus libro VIII.
 De officio proconsulis ad legem luliam de ui publica &
 p. ueritate eod. de l. xii. quibusdam testimonium
 omnino quibusdam interdicitur in iuris capite octo-
 gesimo. & vii. & capite octogesimo octauo. In hac
 uel bechir uel bis hominibus in hac lege in re uel testimo-
 nium dicere. ne licet aliquis ab coparentem uel uis

K[̄]P DCLXII: Idem eodem libro et ^ñT falsum est
 quidquid in ueritate non est. sed p uerum adseuerat;
 K[̄]P DCLXIII, ULPIANUS sub titulo de poena legis cor
 neliae testamentaria libro viii. preterea factum est
 senatus consultum statilio. et tauro consulibus quo 5
 poena legis cornelię inrogatur ei quidquid aliud quam
 testamētū sciens signauerit signaueri uę curauerit,
 K[̄]P DCLXIII: ITEM QUOD FALSAS TESTATIONES
 faciendas testamenta uel falsa inuicem dicenda
 aut consignanda dolo malo curauerit licinio V, et tau 10
 ro cons̄s, k[̄]p dclxv: Item qui OBSTRUENDAM ad
 uocationem testimonia uę pecunia acceperit pactus
 uę fuerit societatem cohierit. aut aliquam delatio
 nem interposuerit, K[̄]p dclxvi: Item si quis cohie
 rit ad occisionem innocentium senatus consulto quod 15
 cocta et messella factum est cohercentur. sed et si quis
 ob uenundandum uel denudandum non remittendū
 uę testimonium pecuniam acceperit senatus con
 sulto quod duobus geminis cons̄s factum sit poena
 legis cornelię adficitur. et reliqua. viii: Item moy 20
 ses. falsum testimonium non dabis aduersus pximū
 tuum: K[̄]p dclxvii: Ulpianus LIBRO viii.

De officio pconsulis ad legem iuliam de ui publica et
 priuata eadem legem quibusdam testimonium
 omnino quibusdam interdicitur inuitis capite octo 25
 gesimo et vii, et capite octogesimo octauo. In haec
 uerba his uerbis hominibus in hac lege in reū testimo
 nium dicere. ne licito qui se ab eo parentem uę eius

Line.

1. T = titulo.
2. uerum, *read* uero. adseuerat, *read* adseueratur.
3. L. 9 D. ad l. cor. de fal (*reference to Digest*) on margin by later hand.
- 3 and 4. *Instead of the whole of line 3 and 4 till libro viii. Blume has Ulpianus libro octauo [de officio proconsulis] sub titulo de poena legis corneliae testamentariae.*
6. quid quid *read* qui quid.
7. testamētū = testamentum. *After sciens, supply dolo malo falsum (Digest). signaueri, read signari.*
8. quod, *read* qui ad (*Digest*).
9. uel, *read* ue.
10. curauerit, *read* coierint *Digest*.
11. obstruendam, *read* ob instruendam (*Pithou*).
12. pecunia *read* pecuniam.

Line.

13. societatem, *read* societatemue; cohierit = coierit.
- 13 and 14. delationem, *M. has de ea re pactionem; Huschke obligationem (from Digest).*
- 14 and 15. cohierit = coierit.
15. occisionem, *read* accusationem (*Pithou from Digest*).
16. cocta = cotta. messella = Messalla.
17. *Instead of this line, read ob denun tiandum uel non denuntiandum remit tendum (Cujas).*
19. sit, *read* est.
23. *After proconsulis supply sub titulo.*
24. legem for lege.
26. *Before in haec repeat capite octogesimo octauo added by Lachmann.*
27. uerbis omit, or with Lachmann *read* uero. In hac omit in.
28. licito, *read* liceto; and parentem, parente.

liberatus est. si autem liberatus fuerit. quique
 impudicus et iniquus erit. in integrum restitutus non est.
 quique in iudiciis custodice quis publice erit. quique de
 pugnandi cause ceu actor accus erit. quique bestias
 depugnare locatur. Loccuerit pfectum quinquia cu
 leandi cause ceu actor missus est et in paelie us corpore
 quistum facit fecerit quique ob testimonium dictu
 pecuniam accepisse iudicatus est. neue quis eorum
 haec legem in reum testimoniu dicat capite octoge
 simo septimo his homines in reum testimoniu
 nedicunt quis ob iniuriam est et repproste uere cognatione
 conlunatus. quique foet gnt utriusq pyuignus queq
 erit. A reliqua. **cap. del. xiii.** Paulus libro sen
 tentiarum sub titulo de testib. & quidam
 susceptos a iustis & iudicibus quod accusator
 de domo eduxit uel uice humiliter informauerit
 interrogari non placuit testibus sum & uice qua
 lites expectandebat. & dignitates sicut ad finem uel
 cognoscendum in reum testes in interrogari non possunt.
 aduersus se in iudicio parentes & liberi. latini quibz
 ne uolentes cedat testimonium cedat ad id sunt quia
 reuoluerat testimonium necessitudo personarum ple
 rumque consumpit. **Explicit titulus de paenitentia**
 his testimoniu non admittendo decimo.

Incipit de deposito moyses dicit.

cap. del. xviii. Si aliquid dabit proximo suo in gntu
 aut uisseriure & furatum fuerit de domo hominis
 si inuenitur qui furatus est reddet duplum. quod si

Exod 22. 7

liberto uē cuius eorum libertus libertauerit. quiue
 inpuer erit quiue eorum in integrum restitutus non est.
 quiue in uinculis custodiaque publica erit. quiue de
 pugnandi causa auctoratus erit. quiue bestias
 depugnare locauit. locauerit preterquam quiacu 5
 landi causa ad urbem missus est erit palā uē corporē
 questum faciet fecerit quiue ob testimonium dicendū
 pecuniam accepisse iudicatus erit. neue quis eorum
 hac legem in reum testimoniū dicat capite octoge
 simo septimo his homines inuiti in reum testimoniū 10
 nec dicunt qui sobrinus est ei reo ppiore uere cognatione
 coniunctus. quiue socer gener uiricus priuignusque eius
 erit, et reliqua: Kp̄ dclxviii, PAULUS LIBRO SEN
 tentiarum sub titulo de testib³ et questionib³
 susceptos testes et eos uel maxime quod accusator 15
 de domo eduxit uel uite humilitas infamauerit
 interrogari non placuit testibus enim et uite qua
 litas expectari debet. et dignitas si sint adfinem uel
 cognatum inuiti testes interrogari non possunt
 aduersus se in uicem parentes et liberi, itemque liberti 20
 nec uolentes ad testimonium admittendi sunt quia
 rei hi uere testimonium necessitudo psonarum ple
 rumque corrumpit: EXP̄L TITULUS DE FAMILIA
 ris testimoniū non admittendo decimo
 INCIPIT DE DEPOSITO MOYSES DICIT. 25
 Kp̄ dclxviii: Si aliquid dabit pximo suo argentū
 aut uas seruare et furatum fuerit de domo hominis
 si inuenitur qui furatus est reddet duplum, quodsi

Line.

1. liberto uē libertauerit, *read (with M.) libertoue cuius eorum libertiue libertaue liberauerit.*
2. impuber, = impubes. *After quiue, M. inserts iudicio publico damnatus est qui (Digest).*
4. *Before bestias insert ad (Pithou).*
5. locauit, *read se locauit.*
- 5 and 6. quiaculandi, *read qui iaculandi.*
7. fecerit, *read feceritue.*
- 8 and 9. neue dicat. *M. changes to nec uolens dicit.*
9. legem, *read lege.*
10. homines *omit (M).*

Line.

11. nec dicunt, *read ne dicunto, (Lachmann); for uere, ue.*
12. priuignusque, *read priuignusue.*
14. *After sententiarum, read v.*
15. susceptos, *read suspectos, and for quod, quos.*
17. testibus, *read in testibus.*
18. expectari, *read spectari. si sint, omit and before ad finem insert in (V.)*
20. *After itemque, Huschke inserts patroni et.*
22. hi uere, *omit hi and read uerae.*
23. testimoniū = testimonium.
26. aliquid, *read aliquis. Exod. 22. 7 (Biblical reference) on margin by later hand.*

non fuerit inuestitus fur accedat usque ad rem
susceperit ante dominum & si iuste nihil sequeatur
egressus de omni re commodatæ premisi & liberabitur
l. p. de l. xx. de destinat. lib. odifferentiam
secundo de deposito uel commendatæ: Commodatæ
dicitur conuictus est culpa præstare cogitur. qui uero
de deposito conuenitur de dolo non & iam de culpa
condemnatidus est. commodatæ enim contractus quia
utriusque contrahentis utilitas interuenit utriusque
prestatum indepositi uero consilium deponentis utilitas
ueratur tibi doli & tantum præstatur sed in ea
quoque peccatis iuris istæ regulæ custoditur. si cum &
in pudenti iudicio & in actionem reuocari & doli & culpa
deducatur qui utriusque contrahentis utilitas inter-
uenit in commendatæ uero iudicio doli non & cum cuicunque
utilitas in administratione uersatur depositum
natus in fecit est qui uero commodatæ condemnatur
non fit in pudenti aliter in pudenti doli aliter in pudenti
culpa condemnatur actione deposito conuictus
ei uero sum nomine cepit in doli iudicem utilitas
seperitur ad huius cuius commodatæ est in proue cuius
nam & actionem in doli in pensam am necessariam
has lute persequitur quas porat in legem uel aliter la-
borantem in pudenti. respondit de deposito
l. p. de l. xxi. Si ubi p. i. tur dominus domui habet
fasti actionem quamuis apud quem res deposita est
intra sit ob pensam in huius actionem se retineat. in
uero cuius commodatæ sit furat seperi debet

non fuerit inuentus fur accedat his qui comm[en]datum
 suscep[er]at ante dominum et iurauit nihil se nequiter
 egisse de omni re comendata p[ro]ximi sui et liberabitur.
 Kp dclxx, MODESTINUS libro differentiarum
 secundo⁴ de deposito uel commendato: Comendati iu
 ditio conuentus est culpam prestare cogitur qui uero
 de depositi conuenitur, de dolo non etiam de culpam
 condemnandus est. comodati enim contractus quia
 utriusque contrahentis utilitas interuenit. utrumq[ue]
 prestatur in depositi uero causula deponentis utilitas
 uertitur tibi dolus tantum prestatur. sed in ceteris
 quoque partibus iuris ista regula custoditur. sic enim et
 in fiducię iudicio et in accionem rei uxori et dolus et culpā
 deducitur quia utriusque contrahentis utilitas inter
 uenit in mandati uero iudicio dolus non etiam tutoris
 utilitas in administratione uersatur depositi dam
 natus infamis est, qui uero commodati damnatur
 non fit infamis alter enim p[ro]pter dolum alter p[ro]pter
 culpam condemnatur actione deposito conuentus
 ciuiarum nomine aput eundem iudicem utiliter
 experitur adhis cui res comendata est inproue ciua
 riarum exactionem intendit inpensas tamen necessa
 rias iure p[er]sequitur quas forte in egrum uel alias la
 borantem impenderit. RESPONDIT DEPOSITA
 Kp dLxxi. Si subripiatur dominus domui habet
 furti accionem quamuis aput quem res deposita est
 intersit ob inpensas in rem factas se retinere. ius
 uero cui res commodata sit furti experiri debet

Line.

1. accedat, *read* accedet.
2. iurauit, *read* iurabit.
5. *After* secundo *supply* sub titulo. uel
 commendato, *read* et Comodato.
 Comendati *read* commodati (W.).
6. est, *read* et.
7. de depositi, *omit* de: culpam, *read*
 culpa.
8. comodati, *read* commodati, *and* *for*
 contractus, contractu (V. W.).
10. causula *read* causa sola (V.).
11. tibi, *read* et ibi (V. W.)
13. iudicio, *read* iudicium; uxori *read*
 uxoriae; et dolus, *omit* et; *for* culpā
read culpa.

Line.

15. iudicio, *read* iudicium. *After* etiam
supply culpa deducitur quamuis singu
 lariter denotare liceat in tutelae iudicium
 utrumque deduci cum solius pupilli
 (V. W.).
16. uersatur. *read* uersetur.
19. deposito, *read* depositi (Digest).
 20. ciuiarum, *read* cibariorum.
21. adhis, *M.* at is; *for* commendata *read*
 commodata; *for* inproue, inprobe.
- 21 *and* 22. ciuiarum = cibariorum.
- L. 23. D. depos (reference to Digest) on
 margin by later hand.
24. Respondit deposita, *read* res deposita.
25. domui, *read* dumtaxat (Schulting).
26. *After* quamuis *supply* eius (V. W.).
27. se retinere, *read* rem retinere (Edd.).
 ius, *read* is.

si in aedibus decesserit commodatarius semper in
simpulum competat depositum vero nonnumquam in
duplum scilicet si ruine uel nece uel precegi uel nece diu aut
tumultus causaretur deponatur. l. p. de l. xii

Erano genianus sub titulo de deposita huiusmodi in sen
constitutione. idem augustus cesar placuit muna
tio eum qui suscepit depositum idolum non etiam
casu prestare et alius est. cum itaque pponat sig
nis si uisdam eximata de hisque tribuere com
deat. ne ullum idolum in subarchibus rebus adhibi
tum recator punitis nihil contra luy rationem
peccatur. & qm ne cuique res moras adhibeat
uacat & actum negotium inter uos horum secundu
luy horum in satisfactionem decidatur. l. p. de l. xii

Subscripta vii kl. kal. gensonia augustus ces. vii kl.
Idem augustus & cesare p. aurelio alernico andronico
euspne quosue fhm & cer. g. bitimacaria deponisse
pponis cepit recator punitis conuicti in aro
gon quod siue athenae. siue dolofecerunt communis
possint restituere secundum bonam fidem tribuere
facere compelle subscripta: vi kl. aprilis syran. ce
ss cons. l. p. de l. xiii. Idem augustus & cesar
res aurelio & eustacio & diosimo hisque depositu
suscepit ultra idolum. si non aliud specie hater conue
nit prestare nihil necesse habet cuius in mor luy
recator punitis partium allegationib; auditis pro
exptorum qualitate cesus ordin. uit. si actum
subscripta xiii kl. non appiana.

Si modo soluenda actio fuerit commodati semp in
simplum competit depositi uero nonnumquam in
duplum scilicet si ruineꝝ uel naufragii uel incendii aut
tumultus causa res deponatur, Kp̄ dclxxii

Ermogenianus sub titulo de depositi huius modi inseri 5
constitutione. idem augustus cesar flavius muna
tio eum qui suscepit depositum dolum non etiam
casu prestare certi iuris est. cum itaque pponas ig
nis sui quedam cremata de hisque tibi fuere comen
data. nec ullum dolum in subtrahendis rebus adhibi 10
tum rector p̄uintię nihil contra iuris rationem fieri
patietur, et qm̄ nectu quereris moras adhibita
uarietatem negotium inter uos hortum secundũ
*S*iuris hordinem sua rationem decidetur, Kp̄ dclxxiii
Subscripta viii KŁ Iul. Serdica Augustus cesarib3 15
Idem augustus et cesare f̄t aurelio altenico andronico
Ieus pne quos uestem et argenti materia deposuisse
pponis aput rectorem p̄uintię conuenit interro
gari quod siue teneant. siue dolo fecerunt cominus
possint restituere secundum bonam fidem tibi satis 20
facere compellet subscripta: vi K† april Syrmi. cē
ss̄ cons̄: Kp̄ dclxxiiii: Idem augustus et cesa
res aurelio et eustatio et diosimo his qui depositũ
suscepit ultra dolum. si non aliud specialiter conue
nit prestare nihil necesse habet cuius memor iuris 25
rector p̄uintię partium allegationib3 auditis pro
ereptorum qualitate sue ordinauit. sententia
subscripta xiiii K† nōu appiaria;

Line.

1. Soluenda, *read* soluendo (*Pithou*); actio fuerit, *read* fuerit actio.
5. de depositi, *omit*, de (*B. index*), or with *Huschke* *read* deposito. inseri, *read* inserit.
6. constitutione, *read* constitutiones. Augustus cesar flavius, *read* Augg [et]. Caess. Fl. [i.e. Flaviol].
8. casu, *read* casum.
9. sui, *read* ui.
12. nectu, *read* necti.
13. uarietatem, *read* uarietate: for hortum ortum.
14. rationem, *read* ratione.

Line.

15. Augustus cesarib3, *read* Augustis cons̄s. (*Cujas*).
16. Augustus et cesare, *read* Augg. et Caess. (*B. index*).
17. eus, *read* eos: pne, *read* penes: materia, *read* materiam.
19. For quod, *read* qui eos (*Huschke*); for fecerunt, fecerint. cominus = quominus.
21. and 22. Syrmi. cē ss̄, *read* Sirmi Caess.
2. For Augustus, Augg. (*Cujas*).
2. eustatio = Eustathio; his = is.
2. allegationib; = allegationibus.
27. sue, *read* sua; ordinauit = ordinabit. sententia = sententiam.

l^o p^o dcl. xv. Idem. augustus. & cetera. l^o p^o vii.
& quod dicitur ille quid dolo malo posito non restituit
suo nomine conuentus ad eius cum infame periculo
restitutionem urgetur senp. tit. d. decem. il. come
dic. c^o r. c^o n^o r. l^o p^o dcl. xvi. Paulus lib. senius
titerum sub titulo secundo. de deposito deponere
possumus apud alium id quod nostrum est uel alibi
depositum est quasi dispositum seruandum est quod
breue tempus custodiendum datur deponere uidetur
quod in maiori ruine inchoat naufragi apud alium cur
atque causa deponit. deponere uidetur. & his qui sus
picionem habent uel minus idoneam custodia domus
uelum locorum amens apud aliquem res eas
custodiendum commodat. si facellum uel argentum
deposuero. & his poene quem depositum fuit in el
uito contumacit. & depositi & furci actionem in
lineum competat obres depositas doli cetera impes
tens sol. in iudicio de positi hanc mora & fructus ue
niunt. & usure ei de posite prestantur. si quis
rempoene se posite apud alium deposuerit. tam
ipse direptam. quam his qui apud eum deposuit uale
actionem de positi habere possunt. si pecuniam de
posuero eam hancque in tibi comis sero mutuum
magis uidetur quam depositam hac. phoe per
culocauoerit. si in apud te de posite uendideris
eamque redimeris postquam p^o dcl. teni semel amito
dolo p^o p^o p^o de positi actionem tenereberis.
& causa de positi legimus duodecim tabularum indu

l^o 2. 12

Kp̄ dclxxv: Idem Augustus et cesares vii
et quadrat ille qui dolo malo posito non restituit
suo nomine conuentus ad eius cum infamę periculo
restitutionem arguetur scripta id. decem. ii. come
dia ccs cons. Kp̄ dclxxvi: PAULUS LIB. SENTEN 5
tiarum sub titulo secundo de deposito deponere
possumus aput alium id quod nostri iuris est uel alieni
depositum est quasi diupositum seruandum est quod
breue tempus custodiendum datur deponere uidetur
qui in metu ruine incendii naufragii aput alium cus 10
todie causa deponit. deponere uidetur, et his qui sus
pectam habent uel minus idoneam custodiā domus
uel uim latronum timens aput aliquem res cus
todiendam commodat. si sacellum uel argentum
deposuero. et his poenę quem depositum fuit me in 15
uito contrectauit. et depositi et furti actio mihi
in eum conpetit ob res depositas dolus tantum pres
tari solet in iudicio depositi hec mora et fructus ue
niunt, et usure reideposite prestantur. si quis
rem poenę se posita aput alium deposuerit. tam 20
ipse direptam, quam his qui aput eum deposuit utilē
actionem depositi habere possunt, si pecuniam de
posuero eam hanc quem tibi cōmissero mutuam
magis uidetur quam depositam hac, p hoc peri
culo tuo erit, si rem aput te deposita uendideris 25
eamque redimeris post quam pdideris semel amisso
dolo perpetuam depositi actionem teneberis,
et causa depositi legem duodecim tabularum indu

Line.

1. Augustus et cesares, *read* Augg. et caess.
- 1 and 2. uii et quadrat ille, *read* septimiae
 Quadratillae (V. W.).
2. posito, *read* depositum.
3. infamę = infamiae.
4. restitutionem, *read* after eius in line 3.
 scripta id. decem, *read* subscripta prid.
 idus decembres (W.).
- 4 and 5. II comedia, *M. has* Nicomedia.
5. ccs, *read* C.C.
6. secundo, *read* after libro in previous
 line.
9. Before breue *supply* ad.
- 10 and 11. custodie = custodidae.
11. his = is.
12. habent, *read* habens (V. W.).
13. res, *read* rem,
14. Lib. 2. Tit. 12 (reference to Paulus) on
 margin by later hand.

Line.

14. commodat, *read* commendat; sacellum
 as sacculum (*Digest*); after argentum
supply signatum (Paulus).
15. his = is. poene = penes.
18. hec, *read* ex (V. W.).
19. usure = usurae. deposite = depositae.
20. poenę = penes; posita, *read* depositam.
21. direptam, *read* directam. his = is.
23. eam hanc.....cōmissero. *M. reads*
 eamque...permisero, *Blume* eaque uti
 tibi permisero.
24. depositam, *read* deposita. hac = ac.
25. deposita, *read* depositum.
26. redimeris, *read* redemeris. post quam,
M. omits quam; amisso, *read* admisso.
27. perpetuam.....actionem, *read* perpetua
actione (W.).
28. et, *read* ex, and legem, lege.

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 plun aucto dicitur pñdum pteator in simplum:
 k p del. xvi: Orecorlanus lib. ko. iii. subq
 tulo de deposito imp alexander. a mestho milig
 incur suloxationum ornem mnta deposita aput
 huer pfectum ab eis pegerunt de mnta
 ad hq d q rurs quid depositum accepit. quidolum
 tñtium pfecte debunt non p tñt. quod si &
 p tñt tñt locoracini commissi. res que in potest
 te he sed sunt non restituntur. tñt de posita qua
 & bñd & a tñt. sed hñt mndicatio conpetat.
 pñt. vii. d. lct. ut. maxima nobis. & urbano. cē.
 k p del. xviii: Paulus lib. k. responsor v.
 sub titulo & loca. v. & mndicatio imp. an. commut
 lulo agypino dominus hominū pñtūm pñtūm
 mntionis uele pñtūm locoracini pñtūm non
 cogitur. hñt cessantib; si quid & posita rebus in lesir
 & tñt in secus hominū damnum depositorum sarcin
 debet. pñt. iii. d. non. non. antonino. iii. conrt.
 k p del. xxi: Paulus lib. k. sars pñtūm
 constitutionib; declarare hñt qui horreo locut
 mntionem unū in pñtūm non posse. Expt. titulo
 de deposito unde: k p del. xxx. Incip. de abe
 geccationibus moyses dicit. Siquis in uolauerit
 uiculum aut ouem & occiderit aut uindederit
 quinque uiculus restituiere pro uiculum unum
 quod catur oues pñtūm una quod si non habet unde
 reddat ubi uindetur pñtūm. k p del. xxxi.
 Paulus lib. k. sententiarum sub titulo

plum actio datur edictum pretoris in simplum :
 Kp̄ dclxxvii: GREGORIANUS LIBRO IIII. sub ti
 tulo de deposito Imp̄ alexander. ā mestrio militi
 incursu latronum ornamenta deposita apud
 inter prefectum ab eis perierunt detrimentū 5
 ad heredes eius qui depositum accepit, qui dolum
 tantum prestare debunt non p̄tinet, quod si ex
 pretexto latrocinii commissi resque in potesta
 te heredi sunt non restituntur. tam depositi quā
 exhibendo^ū actio. sed in rem uindicatio conpetit, 10
 prop. vii d Kt̄ iul̄ maximiano bis et urbano. CC
 Kp̄ dclxxviii: PAULUS LIBER RESPONSO^r v,
 sub titulo ex locato et conducto imp̄. antoninus
 Iulio agripino dominus horreorum periculum sui
 maioris uel efracture latronum prestare non 15
 cogitur his cessantib; si quid expositis rebus inlesis
 extrinsecus horrei damnum depositorum sarciri
 debet. prop. IIII NON NOU. antonino. III consl̄
 Kp̄ dclxxviii: PAULUS R/ SATIS PREPOSITA
 constitutionem declarare his qui horrea locant 20
 maiorem uim inputari non posse: EXPE TITULO
 de deposito unde: Kp̄ DCLXXX, INCIP. DE ABE
 geatoribus moyses dicit, Si quis inuolauerit
 uitulum aut ouem et occiderit aut uindederit
 quinque uitulus restituere pro uitulum unum 25
 quattuor oues p̄ oue una quod si non habet unde
 reddat uenundetur p̄ furto. Kp̄ dclxxxī.

PAULUS LIBER SENTENTiarum SUB TITULO

Line.

1. edictum, *read* edicto.
5. inter prefectum, *read* interfectum (V., W.).
- 7 and 8. ex pretexto, *omit* ex and *read* praetextu (*Just.*).
9. heredi, *read* heredis (W.).
10. exhibendo^ū, *read* ad exhibendum (*Just.*); *before* in rem, *insert* et.
11. d = die, *omit*; for Maximiano, *read* Maximo. CC = cons.
14. agripino = Agrippino; sui, *read* uis.

Line.

16. expositis, *read* depositis (*Just.*).
17. horrei, *read* horreis perit (V., W.).
18. III should be IIII.
- 22 and 23. abegeatoribus, *read* abactoribus, *Huschke* retains abigeatoribus.
25. For uitulus *read* uitulos; for restituere, restituat (V., W.) or restituet (*M. after* anteriori Sept.).
28. Liber, *read* libro; *after* sententiarum add quinto.

de abigeis et de pecoribus atrociter peccantur ab atrociter peccantibus
ad gladium uel in metallum nonnulli qui in inopis
publicum dantur atrociter aut sunt quique quos & ager
cium de stabulo uel de pasuis habigunt uel si id sepius
aut a seffo conducere manu faciunt. **l. p. de l. xxxii**

Idem paulus eodem libro & titulo ab egeatone sunt
qui unum equum uel duas equas ad ad hunc que boues uel ca
pras decem porcos quinque. abegeant quidquid uero in
erchum numero fuerit ablatum inponat fur et pro
quod ab eo eius aut in duplum aut in triplum conueni
tur aut fustibus cesus in opus publicum unius annida
tur aut sub pena uinculorum domino restitueatur.

l. p. de l. xxxiii. **I**dem paulus eodem libro et titulo
Si a pecora de quibus quis haec uenerit. abegeat ad fo
rum semitendendus est ad quem latro conuenitur in duplo
uel in triplum furti more damnatur. **l. p. de l. xxxiiii**

Idem paulus eodem libro et titulo. Qui bouem
uel equum errantem quodue aliud pecus abduxerit fu
rem magis quam abegeat totum constitui placuit
l. p. de l. xxxv. Paulus libro singulari de poenis
paganorum sub titulo de abigeis dixit. cum durius
abigei damnantur & ad gladium trahuntur itaque
diuus prius ad concilium beatice & ipsi pecora de quibus
haec obicit abegeat ad forum premittendus est & si uultur
fuerit in duplum uel quadruplum condemnandus.

l. p. de l. xxxvi. **U**lpianus libro octauo de offi
p. consulis sub titulo de abigeis abigeis puniendis ita
diuus ad hunc rescriptit concilio beatice abigei cum du

de abgeatoribus atroces pecorum abactores plerūq:
ad gladium uel in metallum nonnumquam autem in opus
publicum dantur atroces autem sunt qui equos et greges
ouium de stabulo uel de pascuis habigunt uel si id sepius
aut a ferro conducta manu faciunt, Kp̄ dclxxxii 5

Idem paulus eodem libro et titulo, abegeatores sunt
qui unum equū uel duas equas totidemque boues uel ca
pras decem porcus quinque, abegerint quidquid uero in
tra hunc numero fuerit ablatum inponat furti pro
qualitate eius aut in duplum aut in triplum conueni 10
tur aut fustibus cesus in opus publicum unius anni da
tur, aut sub paena uinculorum domino restituetur.

Kp̄ dclxxxiii; IDEM PAULUS EODEM LIBRO ET TITULO
Si ea pecora de quibus quis litigauerat. abegerit ad fo
rum remittendus est adque ita coniunctus in duplū 15
uel in triplum furis more damnatur: Kp̄ dclxxxiiii

IDEM PAULUS EODEM LIBRO ET TITULO; Qui bouē
uel equum errantem quodue aliud pecus abduxerit fu
rem magis eum quam abegeatorem constitui placuit

Kp̄ dclxxxv, PAULUS LIBRO SINGULARI DE POENIS 20
paganorum sub titulo de abigeis dixit. cum durius
abigei damnantur, et ad gladium tradantur itaque
diuus pius ad concilium beticę et ipsi qui pecora de quibus
litigabat abegit ad forum premittendus est, et si uictus
fuerit in duplum uel quadruplum condemnandis, 25

Kp̄ dclxxxvi. ULPIANUS LIBRO OCTAUO DE OFFICIO
pconsulis sub titulo de abigeis abigeis puniendis. ita
diuus adrianus rescripsit concilio beticę abigei cum du

Line.

1. abgeatoribus; i omitted before g.
4. habigunt = abigunt.
5. a ferro. *Huschke reads* ferro aut.
7. *After* boues *add* oues.
9. *For* numero *read* numerum; *and for* inponat, in poena.
12. paena = poena.

Line.

15. adque = atque. coniunctus, *read* conuictus (V., W.)
23. beticę = Baeticae.
24. *For* furum *read* forum; *for* premittendus, remittendus.
25. Condemnandis, *read* condemnandus,
27. *Before the second* abigeis *insert* de.

puniuntur. sed & diu damnant solent. puni
 untur. non ubique. sed ubi frequenter est
 hoc genus maleficii. Alioquin et in opus & nonnumquam
 et in opus undamnantur. Ideoque puto apud uos quod
 sufficere genus poenis quod maximo huic maleficio in
 rogatus solle uacat gladium abigeri dentur. aut si
 et in opus & in opus in abigendo fuit. ut prius
 hoc crimine aliqua poena afficeretur. hunc meo alii
 de opus et in opus diu cednensis loquitur. quasi
 grauior poena sit in opus. si foras hoc sensu diu
 cednensis gladium poena ducendo ludamnationem est aut
 differebriam in opus eos qui ad gladium & eos qui ad ludum
 damnantur. nam ad gladium damna conestim con
 sumuntur uel ceras in opus de opus consumuntur. hoc
 in opus damna conestim conestim conestim conestim
 nantur non ubique consumuntur. sed & in opus &
 rudem accipere possunt postea palam si quid in opus
 quinquennium pilleon postea annuum autem rudem
 induere eis pilleon. lxxvii. Eodem
 scripto diu cednensis diligenter & pressum est non ubi
 peccatum esse poena abigerum. lxxviii.
 I. in ulpianus libro de opus qui. Abiger autem pilleon
 huiusmodi qui pecora de opus & de opus subtra
 hunt. & quod ad modo de opus & abiger studiu
 quoniam in opus & de opus quas de opus uel boues de opus
 ab opus & de opus si quis bouem aberrantem uel equum
 in opus ab opus non est abiger. si in opus
 tui. sed & qui porcum uel capram uel berbicum adducit.

rissime puniuntur ad gladium damnari solent, puni
 untur autem durissime non ubique, sed ubi frequentius est
 hoc genus maleficii alioquin et in opus, et nonnumquam
 temporarium damnantur, ideoque puto apud uos quoq;
 sufficere genus poenę quod maximo huic maleficio in 5
 rogari solet ut ad gladium abigei dentur. aut si quis
 tam notus et tam grauis in abigendo fuit. ut prius ex
 hoc crimine aliqua poena affectus sit hunc in metallū
 dari oportere rescriptū diui adriani sic loquitur. quasi
 grauior poena sit metalli nisi forte hoc sensit diuus 10
 adrianus gladii poena dicendo ludi damnationem est autē
 differentiam inter eos qui ad gladiū et eos qui ad ludum
 damnantur. nam ad gladium damnati confestim con
 sumuntur uel certe intra annum debet consummi. hoc
 enim damnatis continetur enimuero qui in ludum dam 15
 nantur non utique consumuntur. sed etiam pilleari et
 rudem accipere possunt post inter palam si quidem post
 quinquennium pilleari post triennium autem rudem
 induere eis pmittitur: K̄P̄ DCLXXXVII: EODEM RE
 scripto diui adriani diligentissime expressum est non ubiq; 20
 parem esse poenā abigeorum. K̄P̄ dclxxxviii'

Item ulpianus libro et titulo quis. abigei autem pprie
 hii habentur qui pecora ex pastu et ex fermentis subtra
 hunt, et quodadmodo depredantur et abigei studiū
 quasi artem exercentes quas degere uel boues de armentis 25
 abducentes ceterum si quis bouem aberrantem uel equū
 in solitudinē abduxerit non est abigeus, sed fur po
 tius, sed et qui porcum uel capram uel berbicem adducunt

Line.

2. frequentius *should be* frequentius.
5. maximo, *read* maximum (P. Faber).
11. poena, *read* poenam.
12. differentiam, *read* differentia.
14. debet, *read* debent; consummi, *superfluus* m.
15. damnatis, *read* mandatis (Pithou).
17. inter palam, interuallum (Lachmann).
20. diligentissime = diligentissime.

Line.

22. Item, M. *has* idem; quis. = qui supra.
23. hii, M. *has* hi; fermentis, *read* armentis (V., W.).
24. quodadmodo, *read* quodam modo (W.).
25. exercentes quas degere, *read* exercent equos de gregibus (Dig.). armentis = armentis.
27. solitudinē = solitudine.
28. berbicem, *read* uerbecem (M.); ueruecem (Dig.).

non tam grauiter ut his qui ad maiora animalia abigent
 plecti debent quamquam autem adrianus metalli poena
 item operib³ uel etiam gladii presto erit adtamen qui ho
 nestiori loco nati sunt non debent ad hac poena ptinere
 sed aut relegandi erunt aut remouendi ordinem rome 5
 tamen etiam bestiis subici abigeos uideamus et sanę
 qui cum gladio abigunt non iniqui hac poena adficiuntur
 EXPL DE ABIGEIS: K^P DCLXXXVIII: DE INCEN
 diariis xii Moyses dicit, si exiuit ignis et inuenerit
 spinas et conprehenderit areas uel spicas aut campū 10
 existimationē restituet ille qui succendit ignem³
 K^P dcxc. Paulus liber sententiarum sub titulo de
 incendiariis quī casa aut pillā inimititiarum gratiā
 incenderunt humiliores in metallo aut in opus publicū
 damnantur honestiores in insula relegantur fortuita 15
 incendia que casu uenti fuerint his uel incuriam ignem
 supponentis ad usque uicini agrus euadunt. et si ex eo
 seges uel uinea uel oliua uel fructifere arbores con
 crementur datū dānum extimatioñ sartiatur,
 K^P dcxcī. IDEM PAULUS EODEM LIBRO ET TITUL 20
 commissum uero seruorum si dño uideatur noxę
 et editione sarcitur messium sanę per dum incensores
 uinearum holiuarum uę aut in metallum humiliores
 datmnantur aut honestiores in insulā relegantur.
 K^P dcxcii. IDEM PAULUS LIBRO ET TITULO 25
 Q
 ui supra Incendiarii quidquid in oppido predandi cau
 sa faciunt facile capite puniuntur
 K^P dcxciii. ULPIANUS LIBRO OCTAUO; DE OF

Line.

1. his, *read* hi; ad maiora, *omit* ad; abi-
gent, *read* abigunt.
2. poena, *read* poenam.
3. item operib³. *Huschke supplies after*
item, temporarii, and *reads* operis:
M., however, emends the two words
to temporari. presto erit, *read* prae-
stituerit, (*Digest*) and cf. V., prestiterit,
adtamen = attamen.
- 3 and 4. honestiori, *read* honestiore.
4. hac poena, *read* hanc poenam.
5. ordinem, *read* ordine.
6. uideamus, *read* uidemus. sanę = sane.
7. iniqui, *read* inique (V., W.).
9. XII. Reference is to Title. exiuit, *read*
exierit (V., W.).
11. existimationē, *read* aestimationem (W.).
12. liber, *for* libro; *after* sententiarum *add*
quinto.

Line.

13. casa, *read* casam. pillā, *read* uillam
inimititiarum, *the frequent ti for ci*.
14. metallo, *read* metallum.
15. insula, *read* insulam.
16. que = quae. fuerint his, *read* furentis
(V., W.), and *for* incuriam, incuria.
17. agrus, *read* agros; et si, *omit* et
(Paulus).
18. oliua, *read* oliuae (Paulus). fructifere =
fructiferae.
19. extimatioe = aestimatione; sartiatur
ti for ci.
22. For et editione, *read* deditione; *for*
sanę, sane, and *for* per dum *read* per
dolum (Paul. Vesontius).
26. quidquid, *M. has* qui quid, *but better*
Huschke's reading, incendia (*for*
incendiarii) si qui.

[illegible]

ficio [proconsulis de nau]fragiis et incendiariis lex quidem cornelia aq[ua] et igni interdicat iussit sed uarię sunt pōtionum, nam qui data opera in ciuitate incendium fecerunt si in humillimo loco sunt bestiis subici solent. si in aliquo grado et romę id fecerunt capite puniri aut certe adficiendi sunt qui hec committunt. sed et qui non data opera incendium fecerint plerumque ignoscitur, nisi in lata et incauta neglegentia uel lasciuiā fuit.

K^p DCXCIH. PAULUS LIBRO SINGULARI. de poenis pagano^R sub titulo de abigeis dicit incendiarii qui in oppido prede causa id admiserint. capite puniatur qui casu insulā aut uillā non inimicitia incenderint leuius fortuita enim incendia ad forum remittenda sunt ut damnum uicini sarciatur; K^p dcxcv.

ULPIANUS libro ad edictum sub titulo. si fatebitur iniuriam occisam esse in simplum, et cum doceret itē si insula meā adusueris uel incenderis aquiliae accione habebō. K^p dcxcvi. Item quę est et si arbustum meum uel uillam meā quod si dolo quis insula exuserit etiam capitis poenā plectitur quasi incendiarius:

K^p dcxcvii: Item Si quis insulam uoluerit exurere et ignis etiam ad uicini insulam puenerit aquilia te nebitur lege uicini etiam non minus inquilinis ob res eorum exustas et ita Labeo libro xv. responsorum refert. sed si stipulā in agro tuo incenderit ignisque euagatus ad pelium uicini puenerit et illud exuserit aquiliae lex locum habeat an in factum actio sit fuit questio. sed plerisque aquilia lex locum habere nō uidetur.

K^p dcxcviii. ET ita celsus libro xxxvii digestorum scribit, id enim si stipulam incendit ignis

Line.

1. After proconsulis insert sub titulo.
2. interdicat, dots above and below the last letter to indicate that it ought to be omitted.
2. uarię read re uarie (W.).
- 2 and 3. pōtionum, read puniti.
5. grado, read gradu; and for puniri, puniuntur.
6. Blume supplies before adficiendi, deportationis poena (cf. Digest in insulam deportantur); M. leaves hiatus. et, read eis (M.).
12. inimicitia, read ex inimicitia (V., W.).
13. remittenda, t wanting.
14. uicini, read uicinis (W.).
15. After libro insert XVIII (B. index and W.).

Line.

16. For iniuriam, read iniuria; for occisam, occisum (V.), for doceret, diceret (M.), condiceret (Huschke). itē, it might also read tīb.
17. For insula, read insulam; adusueris = adusseris; accione read actionem.
18. Itemque read Idemque.
19. insula, read insulam. exuserit, s wanting.
20. poenā, read poena.
23. uicini, read uicino.
25. incenderit, read incenderit (V.).
26. pelium, read praedium. exuserit, read exusserit.
27. aquiliae, read Aquilia.
28. n = non.
30. id, read ait (W.).

fugit aquilia lege eum non teneri [sed in factum agendū]
quia principaliter hic exusit sed dum aliud legit sic
ignis precessit cuius sententia sit rescriptū diui se
ueri conp̄bata est in haec uerba p̄fiteri p̄pter ignem
babuli gratia factus culpa seruorum uecturię asti 5
lię euacatus agrum tuum ut p̄ponis depopulatus ~
ad exemplum legis aquiliae noxali iudicio acturas
si litis estimatio p̄mittitur iudicium cum adire
potest uidilicet non est uisu, aquilia sufficere si
forte seruus quę idem conductores coloni ad forna 10
cem obdormissent. et uilla fuerit exusta muneris scri
bit ex loca conuentu prestare debere si negligens in le
gendis ministeriis fuit tenetur ceterorum. si alius
ignem subierit fornaci aliū negligenter custodierit
tenetur. namque qui non custodit si nihil hic fecit 15
quę rectę ignem subiecit non peccauit quem ad mo
dum si hominē medicus rectę secuerit sed negle
genter uel ipse uel alius curauerit aquilia cessat.
quid ergo est et hic puto ad exemplum aquilię dan
dam actionem tamen eum qui fornacem obordimi 20
uit uel negligenter curauit. siue homo periit
siue debilitatus est ne quisquam dixerit in eo qui ob
dormiuit rem eum humanam et naturalem passū
cum deberet uel ignem extinguere uel ita munire
ut non euacaret: Kp̄ dcxcviii. Item libro vi 25
ex uiuiano relegatum est si fornum secundum pari
etem communem haberes an damni iniuria teneris
et agit non posset. id, aquilia lege quia nec cum eo
qui focum haberet. ideo equium putat in factū
actionem dandā. sed non p̄ponit exustū parietem 30

Line.

1. fugit, *read* effugit (*M.*).
2. After quia *add* non (*V., W.*); exusit =
exussit; *for* legit *read* egit.
3. precessit, *read* processit; *for* sit
rescriptū *read* et rescripto.
4. p̄fiteri, *Pithou* has profiteri.
5. babuli, *read* pabuli and before it *supply*
qui (*Scaliger*). uecturię = ueturiae.
6. euacatus = euagatus; ~ = est.
7. acturas, *M.* actura.
8. cum adire, *M.* *reads* consistere, and
suggests as alternative iudicem tum
adire potes.
9. uidilicet = uidelicet; uisu, *read* uisa.
11. obdormissent, *read* obdormisset; mune-
ris, *read* Neratius (*Dig.*).
12. loca, *read* locato (*cf. V., W.*); conuentu,
read conuentum.

Line.

13. tenetur, *omit* (*V., W.*); ceterorum, *read*
ceterum (*Dig.*).
14. subierit, *read* subiecerit (*V., W.*).
15. Before tenetur *supply* an; si nihil hic,
omit si and hic.
16. quę, *read* qui; rectę, *read* recte.
17. rectę *read* recte.
20. tamen, *read* tam in; before fornacem
insert ad.
- 20 and 21. obordimiuit, *read* obdormiuit.
21. After uel *supply* negligenter custodit
quam in medicum qui (*V., W.*).
22. ne, *read* nec (*W.*).
23. euacaret, *read* euagaretur.
26. uiuiano, *some retain*; *M.* *reads* Vibiano.
27. communem = communem.
28. agit non posset, id, *read* et ait [*Proculus*]
agi non posse.
29. ideo, *read* et ideo (*V., W.*); equium,
read aequius (*Dig.*).

quod si non est non damnum dederit
et si non est non damnum dederit
me in hac actione. **l. p. dec.** Idem in p. ac. cum in
perire fortassis sum de hoc sensu specul. nisi quis
dixerit damnum non fecit sufficere cautionem. sed & si
quis servum inquilini in suam causam lib. x. an servus re-
perit vinum respondisse legem aquila servorum no-
mine dominus lex ab iudicio conveniendum excolato
autem dominum tenet negat procul autem. &
cum coloni servum illum servus possit negare dederit
legem aquila cum ut coloni servus possit negare dederit
& si uno iudicio resisset iudicatum altero amplius non
agendum. **l. p. dec.** Item celsus libro xxvii digestorum
scribit sic ut apud me ager actus ad iudicium adter
servus quosdam negare competere legem aquila
actionem in hac quod speculum quasi apud dominum
non fuerit sed id factum esse celsus ait. cum apud eum
res solent & fructus missi sunt sed specul. eomoveatur
quod nec manum dedit nec de iure fuerit. hoc ipse ait
celsus ait in illis hac excolombas in teresse quasi
manu servagium dominum in pugnant. **Expt. titulo**
de incendiariis. **Incip. de re uxoria mota xiii. l. p.**
moyses dicit. Non transmovebis terminos pro
ximi tui quos consecraverunt patri tui vel pignus per
possessionem tuam. **l. p. decm.** **Paulus Lib. sen**
atitayum sub aetulo finium et exundorum in eum
quia in terminis lib. x. vel amovet gratia hor. d. ne
anima aduervatur. **l. p. decm.** **Ulpianus lib. viii**
De officio p. consulis sub aetulo determinis morcos qui
terminus movetur non impune id excedere debet

l. p. decm
Deut. 19. 14.

sane en[im queri] potest nondum mihi damnum dederit
et [ita ignem habeat] ut motuam ne mihi de te equū sit
me inter actionem: K^P DCC. IDEM IN FACTUM im
perare fortassis enim de hoc senserit pculus. nisi quis
dixerit damni non facti sufficere cautionem. sed et si 5
quis serui inquilini insulam exuserit lib. x. urseius re
fert sauinum respondisse lege aquilia seruorum no
mine dominū nox ab iudicio conueniendum ex tolcatō
autem dominū teneri negat proculus autem R
cum coloni serui uillam exuserit colonum uel ex locato 10
lege aquilia ita ut colonus seruus posset noxę dederit
et si uno iudicio res esset iudicata altero amplius non
agendō. K^P DCCI. ITEM celsus libro xxvii digestorū
scribit. si cum apes meę ad tuas aduolassent totas
exuserit quosdam negare competere legis aquilię 15
actionem inter quos et pculum quasi apes domini mei
non fuerint. sed id falsum esse celsus ait. cum apes eueni
re soleant et fructui missi sunt. sed pculus eo mouetur
quod nec mansuete. nec ita clausę fuerint hđ: ipse autē
celsus ait, nihil inter has et columbas interesse quae si 20
manu refugiunt domi tamen fugiunt? EXPŁ TITULO
DE INCENDIARIIS. INCIP DE TERMINIA MOTA XIII. K^P
MOYSES DICIT. Non transmouebis terminos pro DCCII
ximi tui quos constituerunt patres tui uel principes
possessionis tuę? K^P DCIII. PAULUS LIBER SEN 25
tentiarum sub titulo finium regundorum in eum
qui uim terminus deiecit uel amouit extra hordinē
anima aduertitur: K^P DCCIII. ULPIANUS LIB VIII
de officio pconsulis sub titulo de terminio moto eos qui
terminus mouerunt non in pūne id facere debere 30

Line.

1. queri = quaeri; before nondum supply si. For dederit read dederis (V., W.).
2. For habeat read habeas (V., W.); for motuam, metuam (V., W.); for de te, detur (Huschke; M. des); and before equū insert an.
3. inter, read interim (Pithou); and for Idem, id est.
- 3 and 4. imperare, read inpetrare (V., W., B. index).
6. quis, read qui; exuserit, read exusserint.
7. sauinum, read sabinum.
8. nox ab, read noxali (V. cf. noxiale W.); and for tolcatō, locato.
9. R = respondit.
10. exuserit = exusserint.
11. Before lege supply uel, and before ita supply teneri; seruus, read seruus; for dederit, dedere.

Line.

13. agendō, read agendū.
14. totas, read tu eas (Digest).
15. exuserit, read exusseris.
- 17 and 18. euenire, read reuenire.
18. missi, read mihi (V., W.).
19. mansuete = mansuetæ, cedilla wanting. hđ = hic deest.
21. manu, read manum.
23. Deut. 19: 14, Biblical reference on margin by later hand.
25. liber read libro.
- 25 and 26. After sententiarum supply primo.
27. Before uim insert per (Paulus); terminus, read terminos; hordine, read ordinem.
28. VIII, read VIII (octavo).
29. terminio for termino.
30. terminus, read terminos.

h. d. decv. omnis h. a. r. i. a. n. u. s. r. e. p. e. r. t. o. g. e. n. t. i. a.
e. v. i. l. e. t. r. s. e. p. t. e. m. b. r. a. r. u. m. s. e. n. t. i. o. n. e. s. e. n. t. i. o. n. e. s. e. n. t. i. o. n. e. s.

Quor. escripto poen. u. u. u. n. s. t. a. u. t. u. e. r. b. e. r. e. s. c. r. i. p. t. a.
t. a. s. e. d. h. a. b. e. n. t. p. e. s. s. i. m. u. f. a. c. t. u. m. e. o. s. u. m. q. u. i. t. t. i. n. o. r. p. i.
n. u. m. c. a. u. s. u. m. p. o. s. i. t. o. r. a. b. s. t. u. l. e. s. u. n. t. d. u. b. i. t. a. c. o. n. n. o. n. p. o. t. e. s. t.
p. o. e. n. e. a. u. m. i. n. o. d. u. r. d. e. c. o. n. d. i. c. i. o. n. e. p. s. o. n. e. d. i. m. i. t. e. f. a. c. i. o. n. i.
t. i. r. i. n. c. o. g. n. i. t. u. p. o. t. i. a. m. s. i. s. p. l. e. n. d. i. d. i. o. n. i. s. i. n. t. e. p. s. o. n. e. q. u. e.
c. o. n. u. i. n. c. a. n. t. u. r. c. o. n. d. u. b. i. t. o. q. u. i. n. o. c. c. u. p. a. n. d. o. r. u. m. d. i. a. p. u. m.

finium causa id admiserunt. & possunt tempus utatur
quecumque actur. & acti iulgeon. & sic inbi. inu. m. a. u. t.
c. n. d. u. m. a. d. o. p. u. r. p. u. b. l. i. c. a. m. d. i. o. n. q. u. o. d. s. i. p. i. g. n. o. r. a. n. t. i. a.
a. u. t. f. o. r. t. u. n. i. t. u. l. e. p. i. d. e. s. u. s. u. s. c. a. u. s. a. p. u. r. u. t. i. n. t. s. u. p. p. i. e. n. t. o. r.
u. s. b. e. n. b. u. r. q. u. o. d. h. e. c. e. n. : E. x. p. l. i. t. u. l. u. s. d. e. r. e. r. a. n. g. e. l. a.
h. p. d. e. c. v. i. I. n. c. i. p. d. e. p. l. a. q. u. i. n. s. x. m. i. t. o. r. s. e. d. i. e. n. t. i. a.
Q. u. i. c. u. m. q. u. i. e. p. l. e. g. i. u. e. n. t. q. u. e. m. q. u. a. m. i. s. r. a. h. e. l. & u. i. n. d. e. l. e.
r. i. t. e. u. m. m. o. r. t. u. e. m. o. n. i. t. u. r. h. p. d. e. c. v. i. i.

Exal. 21 16
Deut. 24 7.

Paulus lib. de m. t. u. s. u. m. v. sub. g. a. u. l. o. a. d. l. e. g. e. m. f. a. b. i. u. m.
l. e. g. e. f. a. b. i. a. t. e. n. a. t. u. r. q. u. i. c. u. i. e. m. i. d. m. a. n. u. m. i. n. g. r. a. u. s. l.
b. g. a. n. u. m. s. e. r. u. u. m. u. s. a. l. b. u. m. c. e. l. e. u. e. n. t. u. s. d. i. d. e. r. u.
u. i. n. x. e. n. t. c. o. m. p. a. r. u. e. r. i. t. & o. l. i. m. q. u. i. d. a. m. h. u. i. u. r. l. e. g. i. s. p. o. e.
n. e. s. u. m. m. e. c. h. e. p. u. r. s. e. d. a. r. a. n. l. a. t. a. e. s. t. c. o. g. n. i. t. i. o. i. n. p. r. e. f. e. c. t. o.
u. r. b. i. s. h. p. d. e. c. v. i. i. I. t. e. m. q. u. e. p. r. e. s. i. d. i. s. p. r. o. u. i. n.
a. t. i. s. d. e. a. r. e. c. o. r. d. i. n. i. s. i. n. e. s. u. i. t. a. n. i. i. n. a. d. u. e. r. s. i. o. n. i. s. i. d. e. o.
q. u. e. h. u. m. i. l. i. o. r. e. s. u. t. i. n. m. e. t. a. l. l. u. m. d. a. m. n. i. t. u. r. a. u. t. h. u. e. n. t.
c. a. n. a. l. l. u. m. t. u. r. h. o. n. e. s. t. i. o. r. i. s. t. i. m. a. d. m. p. t. a. d. i. m. i. d. i. a. m. p. a. r.
a. t. i. b. o. n. o. r. u. m. i. m. p. p. r. e. l. e. g. a. n. t. u. r. h. p. d. e. c. v. i. i. i.

S. i. s. e. r. u. u. s. s. e. i. d. i. t. e. d. n. o. a. l. i. q. u. i. d. u. m. s. e. r. u. u. m. s. u. b. t. r. a. x. e. n. t.
u. s. d. i. d. i. c. i. t. c. e. l. e. u. e. n. t. a. n. i. p. s. u. m. d. n. i. m. a. n. i. m. a. d. u. e. r. t. a.
c. a. n. t. q. u. o. d. s. i. d. i. c. i. t. n. o. i. g. n. o. r. a. n. t. e. c. o. m. m. i. s. e. n. t. i. n. m. e. t. a. l. l. u.
d. e. c. a. u. r. h. p. d. e. c. v. i. i. u. l. p. i. a. n. u. s. l. i. b. r. o. v. i. i.

no

KP DCCV. DIUUS HADRIANUS TERENTIO GENTIA
xvii KLR. Septembriarum se iii co[ns] Rescripsit

Quo rescripto poenam uariam statuit uerba rescripta
ita. sed habent pessimū factum eorum qui terminos fi
nium causam positos abstulerunt dubitari non potest 5
poenę eam modus ex conditione psonę et mente facien
tis magistratui poenam si splendidiore sunt psonae que
conuincuntur condubito quin occupandorum aliorum
finium causa id admiserint, et possunt tempus ut cuius
que cum patitur ętas relegari. et sic in biennium aut 10
triennium ad opus publicum dari. quod si p ignorantia
aut fortuitu lapides uisus causa furati sunt sufficit eos
uerberibus quohceri: EXPŁ. TITULUS DE TERMINEA
KĀ DCCVI: INCIP DE PLAGIARIIS XIII MOYSES DICIT mota
Quicumque plagiauerit quemquam israhel. et uindede 15
rit eum morte moriatur. KĀ dccvii:

PAULUS liber sententiarum V. sub titulo ad legem fabiam
lege fabia tenetur qui ciuem idmanum ingenuus li
bertinum seruū ęq alienum celauerit. uendiderit
uinxerit comparauerit. et olim quidem huius legis poe 20
na summaria fuit. sed tranlata est cognitio in prefecto
urbis; KĀ DCCVIII; ITEMQUE PRESIDIS PROUIN
tię extraordinem meruit ani inaduersionem, ideo
que humiliores ut in metallum damnentur aut in cru
cem tolluntur honestiorem adempta dimidiam par 25
tem bonorum Impp relegantur, KĀ dccviii,
Si seruus sciente dno alienum seruū subtraxerit,
uendiderit celauerit an ipsum dnm animaduerti
tur, quod si id dno ignorante commiserit in metallū
datur. KĀ DCCX, ULPIANUS LIBRO VIII 30

Line. no

1. Gentia = Gentiano.
2. KLR = Kalendarum. Septembriarum,
read Septembrium.
3. rescripta, read rescripti.
4. sed, read se (V., W.).
5. causam, read causa (V.).
6. eam, read tamen (Dig.).
7. magistratui poenam, read magis statui
potest nam (Digest).
8. condubito, read non dubito (V., W.).
9. tempus, read in tempus (V., W.).
10. Omit cum before patitur, and after
relegari, supply id est si iuuenior in
longius, si senior recisus; si uero alii
negotium gesserunt et ministerio functi
sunt, castigari (Dig.).
12. fortuitu, read fortuito. uisus = usus
(Pithou)
13. quohceri, read coerceri; terminea mota
read termino amoto.

Line.

- 15 and 16. uindederit = uendiderit.
17. liber = libro.
18. idmanum, read Romanum (W.), and
for ingenuus, ingenuum.
- 18 and 19. libertinum, read libertinumue.
21. summaria, read nummaria (Cujas).
tranlata = translata; prefecto, read
prefectum.
22. presidis, read praesidis.
23. ani inaduersionem, for animaduersionem.
24. ut, read aut (V., W.); damnentur, read
dantur (V., W.).
25. honestiorem, read honestiores (V., W.).
dimidiam = dimidia.
- 25 and 26. partem = parte. Impp = in
perpetuum (V., W.).
27. dno = domino.
28. an, read in (V., W.).

Lines 15 and 16. Exod. 21: 16; Deut. 24: 7, on the margin by later hand.

sub titu[lo] d[e o]fficio pconsule ad legem fabiam frequens
 est etiam legi[s f]abię cognitio in tribunalibus presidum
 quamquam quidam pcuratores cesari usurpauerint
 quam romę tam in puintiis, sed enim iam eo puentum est
 constitutionibus ut romę quidem prefectus urbis 5
 solus superare cognoscat, si intra miliarium centesimū
 sit inuia commissa, enimvero si ultra centesimum pre
 fectorum pretorio erit cognitio in puintiam enim presidū
 puintiarum, nec aliter pcuratori cesaris hęc cognitio
 iniunguntur quam presidis partibus in puintia funga 10
 tur plenę post sententiam de fabia latam pcurato
 ris parte succedunt huius certę adtamen pcuratori qui
 illam puintiā regit licet de capitalibus causis cognoscere
 nec soleat tamen ut de lege fabiam possit cognoscere.
 KP DCCXI IMP ANTONINUS CONSTITUIT 15
 Idem legis iulię de alteris coercendis constitutione im
 peratoris antonini questionē accipit lege autem fa
 bia tenetur qui ciuem romanum eundemque qui in ita
 lia liberatus sit celauerit uinxerit uinctumque habuerit
 uindiderit emerit quie in ęam rem socius fuerit cui 20
 capite primo eiusdem legis poenam iniungitur. si seruus
 qui sciente dño fecerit dñs eius. sextertiis quinquaginta
 militibus eodem capite punietur eiusdem legis capite
 secundum tenetur, Kp dccxii. Qui alieno seruo 25
 psuaserit ut dominum fugiat qui uę alienum seruum
 inuito domino celauerit, uendiderit emerit dolo malo
 quie in ea re socius fuerit iubeturque populus extertiā
 quinquaginta milia dare et reliqua/ sciendum tamen est
 ex nouellis constitutionib; capit^alis sententia plagia
 tores p atrocitate facti puniendos quāuis et paulus 30

Line.

1. sub titulo de officio proconsule, *trans-*
pose de officio proconsulis sub titulo.
3. cesari, *read* caesaris.
4. quam romę tam in prouintiis (ti = ci)
Huschke, quum . . . tum. *M. retains*
text but transposes tam in prouintiis
 quam Romae.
6. superare = super ea re (V.).
7. inuia, *read* iniuria (*Pithou*).
8. puintiam *read* provincia; enim, *read*
 est.
10. iniunguntur, *read* iniungitur; *after*
 quam *supply* si.
11. plenę = plane (V., W.).
12. parte, *M. writes* partes; *for* huius certe
 adtamen, huiusce rei attamen; *for*
 pcuratori, *read* procurator.
13. illam, *read* nullam (M.).

Line.

14. fabiam *read* fabia.
16. alteris, *read* adulteris (V., W.).
17. accipit, *read* accepit (V.).
18. eundemque, *read* eumue (*Pithou*).
20. uindiderit = uendiderit.
21. poenam, *read* poena.
22. qui, *read* quis (Pauw); sextertiis *read*
 sestertiis.
23. militibus, *read* milibus, *and for* pu
 nietur, punitur.
24. secundum, *read* secundo.
26. uendiderit, *omit the d before r as*
indicated in Codex by the dots
round it.
27. populus, *read* populo; extertia, *read*
 sestertia.
29. constitutionib; = constitutionibus; capi
 t^alis, *read* capitali.

relatis supra speciebus crucis et m[etalli poenam]
huiusmodi eis inrogauit poen[am. Ex]p[er]t TITUL[us],
KP DCCXIII: INCIP XV. DE MATHEMATICIS
et manicheis moyses dicit. Non inueniatur in te
qui lustret filium tuū aut filiā tuā nec diuinus aput 5
quem sortes tollat nec consentiat uenerariis in
postoribus qui dicunt quid co'septum habeat mulie
ri qm fabulę seductorie sunt, nec intendas p[ro]digia
nec interrogas mortuos non inueniatur in te augu
riatur nec inspector auium. nec maleficus aut in 10
cantator, nec pitonem habentē in uentrem. nec ca
ruspex nec interrogatur mortuorum, nec porten
ta inspiciens omnia namque ista a domino dō tuo
damnata sunt. et qui fecerit hec p[ro]pter has enim
abominationes. d[omi]n[us] eradicaui caldeos a facie sua. 15
tu autem p[er]fectus eris ante d[omi]n[u]m d[omi]n[u]m tuū. gentes enī
iste quas tu possides uuguria et sortes et diuinatio
nes audiebant. KP DCCXIII, ULPIANUS LIBRO
vii. de officio p[ro]consulis sub titulo de mathemati
cis et uaticinatorib; preterea interdictos est ma 20
thematicorum callida inpostura et obstanici
tate p[er]suasio, nec hodie primū interdicti eis pla
cuit sed uetus hec p[ro]hibitio est. denique extat
senatusconsultum: KP DCCXV. POMPONIO
et rufo consules. factum quo canetur ut ma 25
thematicis caldeis ariolis et ceteris qui similē
incertum fecerunt aqua et igni interdicantur
omniaque bona erum publicentur, et sic
eternus gentium qui si id fecerit. ut in eū anim
aduertatur. sed fuit quesito utrum scientia 30

Line.

1. poenam omit.
2. eis, *read* reis (V., cf. W.); inrogauit, *read* inrogauerit (V., W.).
4. *Before et supply* maleficis.
5. Deut. 18: 10 (Biblical reference) on margin by later hand.
6. For tollat, *read* tollas; for consentiat, consentias; for uenerariis, uenenariis (W., cf. V.).
7. co'septum, *read* conceptum (V., W.).
- 7 and 8. mulieri, *read* mulier; seductorie, *read* seductoriae.
- 9 and 10. auguriatur = augurior.
11. pitonem = pythonem; habentē, *read* habens.
- 11 and 12. caruspex = haruspex.
12. interrogatur = interrogator.
13. namque = namque; dō = deo.

Line.

15. d[omi]n[us] = deus; eradicaui, *M.* (with Sept.) *reads* eradicabit; caldeos = chaldeos (V., W.); sua, *better* tua (cf. Sept.).
17. iste, *read* ista; uuguria = auguria.
20. interdictos, *read* interdictum (V., W.).
- 21 and 22. obstanicitate, *read* obstinata (M.); and for p[er]suasio, p[er]suasione (V., W.).
25. consules, *read* consulibus; and for canetur, *read* cauetur.
- 26 and 27. similē incertum, *read* simile inceptum (Huschke).
- 27 and 28. interdicantur, *read* interdicatur (V., W.).
28. erum, *read* eorum; sic, *read* si.
29. eternus, *read* externarum (cf. V. and W.); qui si, *read* quis.
30. quesito, *read* quaesitum or questio.

hui[us]modi hominum puniatur an exercitio et pro-
fessio quidem apud ueteres dicebatur professio
nem eorum non noticiam esse prohibitam postea
uariatum, nam dissimulandum est nonnumquam
inrepsisse in usum, ut etiam profiterentur, et publice 5
reprehenderent, quod quidem magis per contoma-
ciam et temeritatem eorum factum est qui uisi
erant uel consulere uel exercere quam qui fue-
rant permissum sepiissime denique interdictum est
fere ab hominibus principibus ne quis omnino huiusmodi 10
ineptiis se immiscerent et uariae punit, sunt hii
quid exercuerunt per mensura scilicet. et consultationis,
nam qui de principis salute capite puniti sunt. uel
qualia poena grauiore adfecti enim uero si quidem
suasorumque leuius inter hos habentur, quam 15
uaticinatores hii quoque plectendi sunt. quoniam non
numquam contra publicam quietem imperium quod
populi romani inprobandas artes exercent, extat
denique decretum. Kappa dcccxvi. diui pii ad pacatum
legatum perintitum lugdunensis, cuius rescripti uerba 20
quia multa sunt de fine eius ad locum hec pauca sub-
iecit. denique diuus marcus eum qui motu cassiano
uaticinatus erat, et multa quasi extinctum deorum
dixerat in insula syrum relegauit. et sane non debent
inpune ferre huiusmodi hominis qui sub obtentum et 25
monitu deorum quedam uel renuntiant uel iactant
uel scientes eos fingunt, Kappa dcccxvii: GREGORIANUS
liber vii. de maleficis et manicheis sub titulo comp-
maximus dioclicianus et maximianus nouelissimi
a. a. iuliano perconsule africae otia maxima interdum 30

Line.

2. Before quidem supply et.
4. nam, read nec.
6. reprehenderent, read se praeberent.
6 and 7. contomaciam = contumaciam.
7. uisi, Pithou reads ausi.
8 and 9. qui fuerant, read quod fuerat.
9. sepiissime = saepissime.
10. hominibus, read omnibus.
11. immiscerent, read immisceret; for punit,
puniti; for hii, ii.
12. For quid, read qui id; for exercuerunt,
exercuerint; scilicet. et, omit et.
14. qualia, read qua alia (V.).
14 and 15. quidem suasorumque, read qui
de sua suorumque (Jac. Gothofred).
15 and 16. quam uaticinatores, M. writes
uaticinatores quamquam.

Line.

16. hii = hi.
21 and 22. subiecit, read subieci.
23. extinctum, read instinctu.
24. insula, read insulam.
25. hominis, read homines (V., W.), and
for obtentum et, obtentu ex.
26. renuntiant, read enuntiant (V., W.).
27. eos fingunt, Pithou omits eos and
reads confingunt.
28. de maleficis et manicheis sub titulo,
read sub titulo de maleficis et mani-
chaeis. comp, read imp (impera-
tores).
29. maximus dioclicianus, M. has Diocle-
tianus et Maximianus, a. a. (et Constanti-
us), nouelissimi = nobilissimi.
30. 'a a', M. has c. c. perconsule, read pro-
consuli.

homines in communionem co[n]ditionis naturae]
hominem modum excedere hor[tantur] et [quaedam]
genera inanissima hac turpissima doctrinae sup
stitutionis inducere suadent. ut sui erroris arbitrio
ptrahere et alios multos uideantur. Iulianę Karissi 5
meę sedi inmortale puidencia sua ornare et dispo
nere dignati sunt que bona et uera sunt. et multorū
et bonorum et egregiorum uirorum et sapientissi
morum consilio et tractatu inlibata puaerentur
et statuerentur. quibus nec obuiam ire nec resistere 10
fas est. neque reprehendi a noua uetus religio debere
maximi enī criminis est. sed tractare que semel ab anti
quis tractata et definita sunt statum et crusum
tenent hac possident. unde p[er]tinatiā prauę mentis
nequissimorum hominum punire ingens nobis studiū 15
est. hi enim qui nouellas ex inauditas rectas deteriorib[us]
religionibus obponunt. ut p[er] arbitrio suo prauum ex
cludant que diuinitas concessa sunt. qm̄ nobis de qui
bus sollertia tua serenitati nostre retulit ma
nicheus audiui[m]us eos nuperrimę uelut noua 20
inopinata p[er]digia in hunc mundum de psica aduer
saria nobis gente p[er]gressa uel orta esse. et multa fa
cinora ibi committere populus namque quietos
pturbaret. nec non et ciuitatib[us] maxima de
trimenta inserere et uerendum est ne forte ut 25
fieri adsolet accendenti tempore conentur exe
crandas consuetudines et istebas leges psarum in
nocentioris nature homines romana gente moder
tā adque tranquillam. et uniuersum urbem nrum
ueluti uenenis de suis maliuolis infigere, et quia omnia 30

Line.

1. communionem, *M. has* comunione.
2. hominem, *read* humane (V., W.).
- 5 and 6. Iulianę Karissimę, *read without cedillas.*
6. sedi inmortale, *read* sed dii inmortales; ornare, *read* ordinare (V.).
7. et multorū, *read* ut multorum (*Cujas*).
9. puaerentur = probarentur.
11. debere, *M. has* deberet.
12. sed tractare, *read* retractare; que=quae.
13. tractata; *read* statutā with V.; for sunt, suum (*Pithou*); for crusum, cursum.
14. hac, *read* ac.
16. ex, *read* et; for rectas, sectas (W.); for deteriorib[us], uerioribus.

Line.

17. prauum, *read* prauo.
18. que = quae; diuinitas, *read* diuinitus; for qm̄ = quoniam, *read* quondam.
19. nostre = nostrae (*Cujas*).
20. nuperrimę = nuperrime; uelut = ueluti.
21. Before inopinata *supply* et.
23. populus, *read* populos.
24. pturbaret, *read* pertubare.
26. accendenti, *read* accedenti; after conentur *supply* per (*Pithou*).
27. istebas, *read* scaeuas (*Pithou*).
28. nature=naturae; romana gente, *read* Romanam gentem (V.W.).
29. adque = atque; urbem, *read* orbem.
30. infigere, *read* inficere (*Cujas*).

qu[ae pandit prudent]ia tua in relationem religionis
 ill[orum genera] maleficioꝝ statutis euidentis
 simorum ex[q]uisita et ad inuenta commenta ideo
 eorum maenas adque poenas debitas et condig
 nas illi statuimus. iubemus namque auctores qui 5
 dem ad principes una cum abominandis scripturis
 eorum seueriori poena subici ita ut flammeis ignibꝫ
 exurantur consentaneos uero, et usque ad eos conten
 ciosos capite puniri precipimus; et eorum bona fis
 co nro uindicari sancimus, si quis sane etiam honorati 10
 aut cuiuslibet dignitatis uel maioris psonae adhuc
 inauditam et turpem adque p omnia infamem se
 cuta uel ad doctrinam psarum se transtulerunt
 eorum patrimonia fisco nostro adsociari facies
 ipsos quoque forensibus uel pconensibus metallis dari 15
 ut igitur strepitus amputari malis hec nequitie
 de seculo beatissimo nostro possit deuotio tua iussis
 ac statutis tranquillitatis nostre maturius obse
 cundare. dat prid pl. april. alexandriae:
 ExpL. TITULUS DE MATHEMATICIS MALEFICIS 20
 ET MANICHEIS. INCIP TITULUS XVI DE LEGITI
 MA SUCCESSIONE; Scriptura diuina sic dicit
 filie salfade adstantes ante moyses et eleataꝝ
 sacerdotem et principem omnemque senatu filioꝝ
 ihl. in foribus tabernaculi testimonii dixerunt, 25
 pater noster mortuus est. et filii non fuerunt ei
 sed filiae et ideo non delegantur nomen patris nri
 de medio tribus sua non est ei masculus date nobis
 possessionem in medio fratrum patri nostri, et obtu
 lit moyses petitionem earum domino do et locutus 30

Line.

1. relationem, *read* relatione.
- 2 and 3. euidentissimorum, *M. has* euidentissime sunt. ad inuenta, *read* inuenta (V., W.).
4. eorum maenas, *read* aerumnas (V., W.). adque = atque.
5. illi, *read* illis (*Schulting*).
6. ad = ac (V., W.).
8. consentaneos, *Huschke* reads consecutaneos; ad eos, *read* adeo (*Pithou*).
10. quis, *read* qui.
11. maioris, *M. maiores*. Before adhuc *M. supplies* ad.
12. adque = atque.
- 12 and 13. secuta *read* sectam (cf. V. secta).

Line.

13. psarum = persarum. transtulerunt, *read* transtulerint.
15. forensibus, *read* Phaenensibus (*Pithou*). pconensibus = proconnensibus.
16. strepitus, *read* stirpitus (V., W.). malis, lues, *M.*
18. nostre = nostrae. maturius, *read* maturet (*Huschke*).
23. salfade, *M. reads* salfad. moyses, *read* moysen, eleatar, *read* Eleazarum (W.).
24. principem, *read* principes (V., W.). senatu, *read* senatum (V. W.).
25. ihl = Israhel.
27. delegantur, *read* deleatur (V., W.).
28. sua, *read* suae.
30. domino do, *read* coram deo (W.).

Sept. 11, 1915

lxxi. Idem quod dicimus. & de ea quae nepos
 manu matris monne causa sit quae gynepos. q. loc. est
 postumiquoque sinuoparente nati essent in portu
 atreus putans forent. i. uheredes sunt.
lxxii. Idem iuxta est de his quor. nomina

est $\overline{\text{dñs}}$ moysi dicens. recte fili[ae salpade locutae sunt]
 et ideo dabit is possessionem [hereditatis in me]
 diū fratrū patris earum. et dicim[us hec] filiis ih̄
 homo si decesserit et filius non habuerit dabit is here
 ditatem pximum eorum de tribu eius, et possidebit 5
 omnia eius. et erit hec filios ih̄ iustificatio iudiciorum
 secundum que constituit $\overline{\text{dñs}}$ moysi. Libro III. institutio
 KP DCCXVIII. GAIUS INSTITUTIONŪ LIB III. nū

Legitimas sic ordinat successionem statutorum here
 ditates lege duodecim tabularum primū ad suos 10
 heredes ptinent. si autē heredes existimantur liberi
 qui in potestate morientis fuerint ueluti filius filia uel
 nepus neptisue pnepus pneptisue ex nepote filio nato
 pgnatos pgnata uē nec interesse naturales liberi a
 n adoptibi ita demum tamen nepus neptis uē et pnep3 15
 pnepotesue suorum heredum numero sunt. si precedens
 psona desierit siue alia ratione ueluti emancipatione
 nam si p idem tempus quo quisque morietur filius in potes
 tate eius sit nepus ex eo suus heres esse non potest
 KP DCCXX. IDEM ex in ceteris deinceps liberorum 20
 psonis dictum intellegimus uxor quoque que in ma
 nu eius estis sua heres est quia filiē loco est, item nu
 rus que in filii manus est, nec et hec neptis loco est, sed
 ita demum erit sua heres filius, cuius in manus eius
 dum pater moritur in potestate eius non sit; 25

KP DCCXXI. IDEMque dicimus, et de eaque nepotis
 manu matrimonii causa sit quē a pnepotis loco est
 postumi quoque si uiuo parente nati essent in potes
 tate eius futuris forent, sui heredes sunt.

KP DCCXXII. IDEM iuris est de his quoR nomina 30

Line.

1. salpade, *read* salfad.
- 2 and 3. mediū, *read* medio (V., W.).
3. dicimus, *read* dices (cf., dicis, V.).
4. filius, *read* filium; before dabit is a large portion of the text has fallen out.
5. pximum = proximo.
6. filios, *read* filiis. ih̄ = Israhel.
7. que = quae; Libro III institutionū, omit as interpolation.
8. Lib. 2, Tit. 16, (reference to Gaius) on margin by later hand.
9. successionem statutorum, *read* successiones intestatorum.
11. si, *read* sui.
12. fuerint, *read* fuerunt; for filia uel, filiaue.
13. nepus = nepos; after neptisue add ex filio; pnepus, *read* pronepos.
14. pgnatos, *read* prognatus; for interesse, interest (Just.); after naturales supply sint (Just.).
15. adoptibi, *read* adoptiui; pnep3 = pronepos.

Line.

16. pnepotesue, *read* proneptisue.
17. After desierit supply in potestate parentis esse siue morte id acciderit (Just.).
20. ex, *read* et.
21. que = quae.
- 21 and 22. After manu supply est; for eius estis *read* ei cuius in manu est (M.).
23. que = quae; manus, *read* manu; for nec, nam (V.).
24. After heres, supply si; manus eius, *read* manu.
25. dum, *read* cum.
26. ea que, *read* ea quae; after ea que supply in.
27. quē a, *read* quia.
28. After quoque supply qui.
29. futuris, *read* futuri.
30. quoR = quorum; nomina, *read* nomine (Pithou).

— 47 —

[ex lege aelia sentia] uel ex senatum consultum post mortem [patris causa] pbata in potestate eius futuri essent, et de eo filio qui ex prima secundaque emancipationem post mortem patris manum mittitur intellegimus cum filiis filiaue et ex altero filio nepotesue existent pariter ad hereditatem uocantur. nec qui gradum pprium est ulteriore excludit et quam enim uidetur nepotes neptesue in patri sui loco portionemque succedere patri rationem, et si nepus neptisue sit ex filio, sed ex pnepus pneptisue simul uocantur, et quia placebat nepotes nepotes ue, KP DCCXXIII. Item pnepotes pneptesue in patri sui locum succedere conueniens non in capita sed in stirpem hereditatis diuidit ut filius dimidiam partem hereditatis fruatur ex altero filio duo plures ue nepotes alteram dimidiam: KP DCCXXIII, ITEM SI EX DUOBUS filiis nepotes extent ex altero filio unus forte uel ex altero ires aut quattuor altera dimidiam de agnatis si nullus sit suorum heredum tunc hereditas ptinet, et eadem lege duo decim tabularum ad agnatos uocantur autem agnati qui legitima cognatione iuncti sunt legitima autem cognatio hoc est que p uirili sexu psona coniungitur, itaque eodem pater nati sunt. fratres agnati uisi sunt qui etiam consanguinei uocantur nec requiritur an matre eadem habuerint. KP DCCXXV, ITEM patruus fratris filio et inuice his illi agnatus est eodem numero sunt fratres patruales inter se, id est qui ex duobus fratribus pgenerati sunt quos plerique etiam consoprinos uocant qua ratione scilicet etiam

- Line.
 1. senatum consultum, *read* senatus consulto (V.).
 2. *After* causa *supply* probatur; nam et hi uiuo patre causa (Gaius).
 3. *After* essent *supply* quod (Gaius); for secundaque, *read* secundaue.
 3' and 4. emancipationem, *read* mancipatione.
 5. intellegimus, *read* intellegemus and *add* igitur.
 5 and 6. nepotes ue, *read* nepotes neptesue (Gaius).
 6. existent, *read* extant (M.).
 7. gradum, *Pithou* gradu. pprium, *read* propior (Pithou). ulteriore, *read* ulteriorem.
 7 and 8. et quam, *read* aequum.
 8. patri sui loco, *read* patris sui locum.
 9. patri rationem, *read* pari ratione (V., W.)
 10. sed, *read* et (V., W.); before pnepus *insert* nepote, and *read* pronepos.
 11. nepotes ue *read* neptes ue (V.).
 12. patri, *read* patris.

- Line.
 13. conueniens, *read* conueniens esse uisum est.
 14. stirpem, *read* stirpes; for hereditatis, *read* hereditates; for diuidit, *read* diuidi ita (M.).
 15. fruatur, *read* ferat and *add* et.
 18. *After* uel *add* duo: ires, *read* tres; *after* quattuor *supply* ad unum aut ad duos dimidia pars pertineat et ad tres aut quattuor.
 19. dimidiam, *read* dimidia.
 20. et = ex (V.).
 22. iuncti, M. has iuncti.
 23. hoc, M. omits, but better *read* haec (Huschke); que = quae; uirili sexu, M. has uirilis sexus; psona, *read* personas.
 24. *After* itaque, M. *supplies* qui; pater, *read* patre.
 25. uisi, M. has sibi.
 26. matre eadem, *read* matrem eandem.
 27. inuice, *read* inuicem; his = is.

ad plures gradus agnitionis puenire potuerimus [n]on
 tamen omnib3 simul agnatis dat lex duo[deci]tabu
 larum hereditatem, sed his qui tunc certum est aliquē
 intestato decessisset pximo gradu sunt, nec in eo iure
 successio est. ideoque si heredes pximos omiserint uel ante 5
 quam hereditatem adierit decesserit sequentib3 nihil
 iuris ex lege competit, ideo aū n̄ mortis tempore certū
 fuerit aliquem in testamentum decessisse quam si quis tes
 tamto facto decesserit melius esse uisus est tunc requiri
 pximū cū certū ēē coeperit neminem ex testamto heredes 10
 forte qui ad feminas adinet hoc iure aliud in ipsarū here
 ditatib3 capiendis placet aliud in ceterorum ab his capi
 endis, nam et feminarum hereditates p̄inde agnationis iu
 re redeunt adq3 masculorum nrē uero hereditates ad femi
 nas ultra consanguinei eorum gradum non ptinent, itaq3 15
 soror fratri sorori uq̄ legitima heres est. amita uero et
 fratris filia heres esse non potest sorores aū nob. loco est
 etiam mater aut nouerca que p in manum conuentionē
 aput patrem nrūm ius filiē cuncta est, si quis defunctus erit
 si sit frater et alterius fratris filius sicut ex uerioribus 20
 intellegitur frater pocior est quia gradu precedit. sed alia
 faciat iuris interpretatio inter uos heredes. quod si defunc
 ti nullus frater exstet, sed sint liberi fratrum ad omnes
 quidem hereditas ptinet, sed quesitum est si dispari nume
 ro sint forte nati ex uno unus uel duo, et ex altero tres 25
 aut quattuor utrum in stirpes diuidenda sit hereditas,
 sicut inter uos heredes iuris est pocius in capita iam du
 dum aū placuit in capita diuidendā hereditatē itaq3
 quodquod dederunt ab utraque parte psonē in tot por
 tiones fuerunt si nullus agnatus sit eadem lex duodecim 30

Line.

1. agnitionis, *read* agnationis. potuerimus,
- read* poterimus (W.).
3. tunc, *M. has* tum cum.
4. intestato, *read* intestatum. decessisset,
- read* decessisse.
5. heredes, *read* hereditatem; pximos, *read*
- proximus; omiserint, *read* omiserit.
6. sequentib3 = sequentibus.
7. aū = autem non. *After* tempore *supply*
- quis proximus fuerit requirimus sed eo
- tempore quo (V., W. and Gai.).
8. in testamentum, *read* intestatum. quam,
- read* quia (Gai.).
- 8 and 9. testamto = testamento.
9. uisus, *read* uisum.
10. ēē = esse; *supply* eo *before* testamto
- (Gai.). heredes, *read* heredem.
11. forte, *read* fore; qui, *read* quod; *before*
- adinet, *supply* tamen (V., W.).
13. nam et, *Gaius omits* et.

Line.

14. adque = atque. nrē = nostrae.
15. consanguinei eorum, *read* consanguin-
- eorum (W.).
17. sorores, *read* sororis (V., W.). aū nob. =
- autem nobis.
18. que, *read* quae.
19. cuncta, *M. has* nanta, *Huschke* conse-
- cuta. *After* si *supply* ei. quis for
- qui.
20. si sit, *M. omits* si. *For* uerioribus *read*
- superioribus.
22. faciat, *read* facta est. uos, *read* suos.
27. uos, *read* suos (V., W.); *before* pocius
- = potius, *insert* an (V., W.).
28. aū = autem.
29. quodquod dederunt *read* quotquot
- erunt (V., W.).
- 29 and 30. *After* portiones *supply* hereditas
- diuidetur et singuli singulas portiones.
30. fuerunt, *read* ferunt.

autem si unus filius et ad hereditatem vocat quisque
 autem si plures filii sunt et hereditatem vocat quisque
 cum illis ceduntur mus gunt hicum iur in de sue et uine
 ab hisse supra cum est hoc quoque loco de hereditate iustitiae
 p d c c x x i Paulus libi si ad naturam vii sub titulo
 de testamento rum successione interfecta dicuntur
 qui etiam in hereditatem fecerit non possunt uel p s i l i u m ut
 interfecti de cedere ab superunt uel huiusmodi
 hereditas repudicet est cuius nō conchilio de fecerit
 sine l i u r p r a t o n o f a c t u a e s t a m o n t a b l a t a d o l y & p &
 accione optinebit eorum quorū a testamento sum pun
 tur aut inuita sunt ipso quidem iure interfecti de
 dunt in testamento hereditas legatuo decimata ebulax
 p i m i a n s u i s h e r e d i t a t i b u s d e h i d e c o g n a t a s a l i q u a n d o
 quoque g r i m b i d e f e r b a t a u r s i n e c o n s u n g u m b i l e n
 ced p r e h e n d i t a t i n t e r p r a t i o n e p r u l o n g u m p r i m u
 h i t a c o g n a t o r l o c o a c c e p e r a n t s u i h e r e d e s s u n t h o c
 p r i m o l o c o p i l i u s p l i c i n p a t e s t a t e p a t r i s n o n f i c i a t
 n e h i t a e s t s i a d o p t u n s i n c a n n a t u r a l e s & s e c u n d o
 l e g i m l u l a p i p i a m u e q u a s i q u o d m a n e a n t i n p o s t
 a t e q u i s u i h e r e d e s s u n t i p s o l u r h e r e d e s i n e i g n o r a n
 t e s c o n s t r u u n t u r u t f u n o s i a u t h u p a n t e s & p e s e g n
 n a n t e s q u i b u s b o n o r u m p o s s e s s i o n e p p a t e r p r e l o n c
 a c a t o n h n n o n e r a t n e c e s s a r i a s u i h e r e d i b u s a d e o a c t m o r
 a t i n a e s t a t o n s r e s u m h e r e d i a t e n o s i d o m i n u c o n t i n u a
 t u r u t n e c a u c o n s a u c a t o n a c s p u p i l l o n e s o n o s i c u r a
 t u r s i a g e c e s s i u a r n i s i p o r a t s o l u b i d e s i a h e r e d u a r
 q u a m u i s e t a m f u n o s u s s i r e s i p i e n t & p u p i l l u s s i a d o l e u n t
 a b s t i n e r e p o s s u n t p o s t m o d o t a m p a t r i n a c a u s u e l a b h o s t b i
 p e u d r u s a u t & p r i m o s e c u n d o n e m a n c i p i o m a n u t a s s u s

tabularum gentiles ad hereditatem uocat qui sunt
autem gentiles primo comentariorum et ultimum est
cum illic admouerimus gentilicium ius in desuetudinē
abisse supuacuum est hoc quoque loco de ea re curiosius tractare
KP DCCXXVI. PAULUS liber sententiarum vii. sub titulo, 5
de testamentorum successionib3 intestati dicuntur
qui testamentum facere non possunt, uel ipsi linum ut
intestati decederent abruperunt uel hii quorum
hereditas repudiata est. cuius nec condicio defecerit
sine iure pretorio factū testamentū abiecta doli expec 10
tatione optinebit eorum quorū testam̄ta rumpun
tur aut inuita fiunt ipso quidem iure testam̄ti dece
dunt intestatorum hereditas lege duodecim tabulaṚ
primum suis hereditatib3 deinde agnatis et aliquando
quoque gentib3 deferebatur sane consanguineis lex ñ 15
adprehenderat interpretationē prudentium primū
inter agnatos loco acceperunt sui heredes sunt hoc
primo loco filius filia in potestate patris constituti
nec interest si adoptiui sint an naturales. et secundū
legem Iulia pipiamuę quesiti modo maneant in potes 20
tate qui sui heredes sunt ipso iure heredes etiā ignoran
tes constituuntur ut furiosi aut infantes et peregri
nantes quibus bonorum possessionis ppter pretoriā
actionem non erat necessariā sui heredibus adeo ad mor
tem testatoris rerum hereditariorū dominiū continua 25
tur. ut nec tutoris auctoritas pupillo nec foriosis cura
sit necessarius nisi forte soluenda sit hereditas
quamuis etiam furiosus si resipierit et pupillus si adoleuerit.
abstinere possint post mortem patri natus, uel ab hostib3
reuersus aut ex primo secundouę mancipio manumissus 30

Line.

1. sunt B^a, *read* sint B^b.
2. comentariorum et ultimum est, *read* commentario retulimus et (*Gai.*).
3. admouerimus, *read* admonuerimus (*W.*).
5. liber, *read* libro; *for* vii, *read* iiii.
6. testamentorum, *read* intestatorum.
7. *After* possunt, *M. inserts* uel iure non fecerunt cum possent.
9. cuius nec, *M. has* quibusue.
10. sine, *Huschke reads* nisi, *Cujas* sane; *after* pretorio *add* non iure (*M.*); abiecta, *read* obiecta.
- 10 and 11. expectatione, *read* exceptione.
11. eorum, *M. has* horum.
12. inuita, *read* inrita; *for* testamti, testati.
- 12 and 13. *After* decedunt *read* sed per consequentias sublato testamento intestati decedunt (*V., W.*).
14. hereditatib3 = hereditatibus, *read* heredibus.

Line.

15. gentib3, *read* gentilibus; *for* consanguineis, consanguinei quos (*Cujas*); ñ = non.
16. interpretationē, *read* interpretatione.
17. loco, *read* locum. hoc, *M. omits*, *Huschke reads* hi.
20. pipiam, *read* papiam.
23. possessionis, *read* possessio nisi (*Van-gerow*).
24. necessariā, *read* necessaria; *for* sui, suis; ad mortem, *read* a morte.
25. hereditariorū, *read* hereditarium.
26. pupillo, *read* pupillis (*V., W.*); *for* foriosis, furiosis.
- 26 and 27. curatur = curator.
27. *After* forte *Krueger supplies* ut abstineant si minus forte; *for* soluenda *read* soluendo.
28. resipierit, *read* resipuerit (*W.*).
29. patri, *read* patris.

cuius uis et oris causa potestatem habet non potestatem imperator
et aeterna in pccat huiusmodi heredes et pccat uel post filios
filios ad intestatorum successionem inter suos ueniunt
nepotes nepotes nepotes nepotes nepotes huiusmodi
culinos ex utroque filium descendentes si nullum potestatem
in pccat inter ipsam uel potestatem uel pccat uel remanent
potestatem et huiusmodi cum quibus in potestatem fuerunt
ipsi ordinem successionis obsequuntur filius cum nepotibus
et ex filio susceptis infamia arguitur ab intestato
pccat in successionem cum pccat filius uocatur in quibus
in pccat in potestatem uel huiusmodi heredes huiusmodi
in pccat diuiduntur locum filius et pccat in potestatem
lorem uel huiusmodi idque uenit huiusmodi et duobus filius
in pccat in numero nepotes successerunt et pccat in potestatem
huiusmodi non sunt in uel huiusmodi mater in potestatem alie
nem in pccat in sequentibus ipsa uel huiusmodi esse non possunt
et in pccat in huiusmodi heredes constituendos est quocirca in pccat
aliquem in pccat in decessis et quod ex uel huiusmodi
condicionis et huiusmodi in pccat in quatuor uel huiusmodi
necesse in pccat in cum filius et in pccat in susceptis uel
adoptauit in huiusmodi locum in uel huiusmodi successionem sicut ipse
pccat in obsequere non potest adoptauit in pccat in ne quasi
cognatus bonorum possessionum eius potestatem potestatem
si in huiusmodi non sunt aduocatus legitimus huiusmodi
patet in inter quos primum locum consanguineo pri
mum agnati autem sunt cognatus uel huiusmodi
descendunt sicut filius pccat in et pccat in uel huiusmodi
capitulum in pccat in agnatus et cognatus hoc
in pccat in in agnatum et in cognatus continetur
in pccat in agnatus uero agnati non comprehenduntur

cuiusue erroris causa pbata licet non fuerint in potestate sui tamen patri heredes efficiuntur post filios filias ad intestatorum successionem inter suos ueniant nepotes neptes pnepotes neptes pneptes hac deinde masculino sexum post filium descendentes si nullum parentum in impedimento ipsi in aui potestate uel paui famili remanserint parentes enim liberis suis cum quibus in potestate fuerunt ipsi ordinem successionis obsistunt filius cum nepotibus ex alio filio susceptis infamia retinentur ab intestato patris successionē cum fratris filii uocantur in quibus in patris sui parentem uenientibus hereditas in stirpes non in capita diuiduntur ita ut filius ex plures nepotes singulos semisses habeant, idque conuenit si ab eo ex duobus filiis in patrum numero nepotes successerint ex filia nepotes sui heredes non sunt in aui enim materni potestate alie nam familiam sequentes ipsa rationem esse non possunt eo tempore suus heres constituendus est, quo certum est aliquem intestatum decessisset quod ex euentu deficientis conditionis et hortum nepotis qui uiuo auo post mortem patris natus iniri potest cum filius et mancipatus suscipit, uel adoptauit sui heredis locum in aui successione sicut ipse pater obtinere non potest adoptiuus tamē ne quasi cognatus bonorum possessionum eius potire potest si sui heredes non sunt ad agnatos legitima hereditas pertinebit inter quos primum locum consanguinei optinent agnati autem sunt cognatis uirilis sexus per uirilem descendentes sicut filius fratris et patruus, et deinceps tota successio inter agnatos et cognatos hoc interest in agnatis enim etiam cognati continentur inter agnatos uero agnati non comprehenduntur

Line.

1. After pbata supply est.
3. ueniant, read ueniunt.
5. sexum, read sexu; post, read per (Rittershusius); nullum, read nullo.
6. famili, read familia; remanserit, read remanserint.
8. ordinem, read ordine; filius, read filii si.
9. infamia, read in familia; ab intestato, read ad intestati (V., W.).
10. in, omit (M.).
11. parentum, read partem; stirpes, read stirpes.
12. diuiduntur, read diuiditur; filius ex, read unus filius et (V., W.).
13. idque, read idemque (Pithou); abeo, read auo.
14. in patrum, read in pari.

Line.

15. auiē, read aui.
16. rationem, read ratione.
17. constituendos, read constituendus.
18. decessisset, read decessisse.
19. hortū, M. ortu. After patris, M. has conceptus sit et post mortem aui.
20. iniri, M. has finire; cum, read quem; et mancipatus, read emancipatus.
22. After potest M. adds a second potest; ne, read nec (Blume).
23. possessionum, M. has possessionem; potire, read petere.
26. cognatis, read cognati. After uirilem supply sexum.
29. After interest add quod (Paulus); enim omit.
30. agnatos obvious error for cognatos (W.).

Rationem autem agnatus est cognatus ibunculus
 ut in cognatus avunculus modum est consanguinei
 sunt. eodemque in nece et diversis in nece; quoniam
 potest fieri fuerunt moratus in potestatem suam quos
 praece si non sit emancipatus. & huiusmodi moratus
 praece nece sunt vel causa praece sunt soror lux consan
 guinitas. tam ad praece quam ad sororis heredi
 tatem admittatur consanguineis non existitur
 agnatis deferatur hereditas putquis alter uero ad
 praece essent quod si plures eodem gradum consistunt
 simul admittantur si sit praece defuncti & praece
 filius & nepos praece & nepos existit filius praece
 nepos praece sed si duorum praece sunt liberi
 non in sortibus sed in coepit hereditas distribuitur scilicet
 & in partibus singulorum unam distribuitur hereditas
 filius & hereditas legimus ultra consangu
 neos successione non admittantur. id quod superius
 uocamus rationem uidetur esse etiam & in legibus
 deum acubulacrum sine ulla discrepatione & huius
 cognatos admittit. **h. p. de ex. vii. ul. prius**
 liberos singulorum sub titulo de legitimis hereditatibus
 in testatorum & in testatorum hereditates partem
 primum ad suos heredes. id est liberos qui in potestate
 sunt ceterosque qui liberos in loco sunt. si in heredes
 non sunt ad consanguineos. id est fratres & sorores & eo
 dem praece sine eis sunt ad reliquos agnatos in huius
 & in praece descendentes eis dem in huius in huius cau
 tum est legem duodecim acubulacrum haec in huius
 moratur cuius huius in huius agnatus primum familia
 habetur si agnatus defuncti non sit eadem lege

et ideo patr[uu]s agnatus est et cognatus abunculus
autem cognatus tantum modum est consanguinei
sunt, eodem patrem nati licet diuersis matrib³ qui in
potestate fuerunt mortis tempore adoptiuus quoq³
frater si non sit emancipatus, et hi qui post mortem 5
patri nati sunt uel causa p̄bauerunt soror iure consan
guinitatis, tam ad fratris quam ad sororis heredi
tatem admittitur consanguineis non existentibus
agnatis defertur hereditas p̄t quis alterū gradū
precesserit quodsi plures eodem gradum consistunt 10
simul admittuntur si sit frater defuncti et fratris
filius et nepus fratres et non existentes filius fratris
nepoti p̄fertur, sed si duorum fratrum sint liberi
non in stirpes sed in capita hereditas distribuitur scili
cet ut p̄ numero singulorum uirium distribuatur hereditas 15
femine ad hereditates legitimas ultra consangu
neas successiones non admittantur. id quod iure ciuili
uoconia rationem uidetur effectum ceterum lex duo
decim tabularum sine ulla discreptiones ex his
cognatos admittit, KP DCCXXVII. ULPIANUS 20
libro singulari sub titulo de legitimis hereditatib³
intestatorum gentiliciorum hereditates p̄tinent
primum ad suos heredes, id est liberos qui in potestate
sunt ceterosque qui liberorum loco sunt, si sui heredes
non sint ad consanguineos, id est fratres et sorores ex eo 25
dem patrem si nec hi sunt ad reliquos agnatos uirilis se
xus p̄ matres descendentes eisdem familie his enim cau
tum est legem duodecim tabularum hac si intestatus
moritur cuius heres nec est agnatus p̄ximus familia
habeatur. si agnatus defuncti non sit eadem lex 30

Line.

1. abunculus, b for u.
2. modum, *read* modo (V., W.).
3. patrem, *read* patre.
6. patri, *read* patris; for causa, causam.
9. gradū, *read* gradu.
10. gradum, *read* gradu.
- 11 and 12. si sit frater defuncti et fratris
filius et nepus, *M's. reading is si sint*
defuncti fratris et filius et nepos.
12. fratres et non existentes, *read* fratre
non existente (V.).
13. p̄fertur, *read* praefertur (V., W.).
15. uirium, *read* uirum (V.).
- 16 and 17. consanguineas, *read* consanguin-
eorum (Huschke).
17. admittantur, *read* admittuntur.
18. uoconia, *read* Voconiana; for rationem,
ratione.

Line.

19. discreptiones, *read* discretione; for
ex his, sexus.
20. cognatos, *M. omits, but Huschke*
reads agnatos.
21. *Before* sub titulo *supply* Regularum,
added on margin by later hand.
24. ceterosque, *faulty cedilla.*
25. sint, *read* sunt (M.).
26. patrem, *read* patre; *after* agnatos
supply proximos id est cognatos
(Blume from Ulpian).
27. matres, *read* mares; for eisdem, eius-
dem, *and* for his, id.
28. legem, *read* lege.
29. cuius, *read* cui suus (Ulpian); for est,
escit (Ulpian), *and* for familia,
familiam.
30. habeatur, *read* habeto (Ulpian); for
eamdem, eadem.

— .52 —

duodecim tabulaꝝ gentiles ad hereditatem uocant
 his uerbis signatus nescit gentiles familiā heres hanc
 nec gentilicia iura in usu sunt. KP DCCXXVIII
 ITEM ab intestato. Institutionum ab intestato quoque
 hereditas defertur. Aut p ius ciuile aut p pretoris bene 5
 ficiū p ius ciuile suis heredib³ uel liberis qui in potestate
 fuerunt filii filiꝝ et deinceps qui in locū defuncti paren
 tis qui ex eodem nati sunt succedunt, KP DCCXXVIII
 ITEM eodem libro post suos ab intestatō legitimeꝝ ad
 mittuntur, primū consanguinei sunt fratres et soror 10
 qui in eisdem potestatem patres fuerunt, et si ex diuer
 sis matribus nati sunt consanguineos et adoptio fa
 cit, et adrogatio causę pbatio. et in manu conuentio,
 KP DCCXXX, ITEM eodem libro et consanguineis legi
 timi uocantur hi sunt agnati qui nos p patris cogna 15
 tionem contingunt uiris sexus nam sciendū fēminis
 ultra consanguineis hereditates legitimas non de
 ferri suis pꝛetor solet et mancipatus liberos, itemq;
 ciuitatem donatus coniungere data bonorum
 possessiones. hi tamen ut bona sit qua pꝛpria habent 20
 his qui in potestate manserunt conferat, nam ēquis
 simum putauit neque eos bonis paternis carere p hoc
 qui non sunt in potestate, neque precipuā bonam
 pꝛpria habere cum partem sint ablaturis suis hoc
 redibus, KP DCCXXXI: ITEM LIBRO QUI SUPRA 25
 de suis heredibus post agnatos pꝛetor uocat
 cognatos cognati aū sunt qui nos p patrem aut
 matrem contingunt post cognatos uirum et
 uxorem. et hec si qui decessit non fuit libertinus
 uel stirpis, libertinꝝ cēterum si libertinus est uel li 30

Line.

1. uocant, *read* uocat.
2. signatus, *read* si agnatus (*Pithou*); *for* nescit, nec escit, *and after* familiam *add* habento nunc nec ullus est (*M.*). *For* hanc *read* hinc.
4. Item, *read* idem. ab intestato institutionum, *read* [libro] institutionum..... [sub titulo de sucessionibus] ab intestato.
7. *Before* filii, *M. inserts* qui sunt.
8. qui, *read* quia.
9. item, *read* idem. legitimeꝝ, *read* legitimi.
10. *Before* sunt *insert again* consanguinei (*Lenel*); fratres, *read* frater.
11. eisdem, *read* eiusdem; *for* potestatem, potestate; *for* patres, patris.
13. *After* adrogatio *insert* et; manu, *read* manum.

Line.

14. item, *read* idem; et, *M. deletes and reads* deficientibus.
16. uiris, *read* uirilis (*cf.* uirili, *W.*).
17. consanguineis, *read* consanguineas (*B^b*).
18. et mancipatus, *read* emancipatos.
19. ciuitatem donatus, *read* ciuitate donatos.
20. possessiones, *read* possessione; *for* hi *read* ita; *for* sit, si.
21. conferat, *read* conferant.
23. qui, *read* quod (*Boecking*); precipuā, *read* praecipua; *for* bonam, bona.
24. ablaturis, *read* ablaturi.
- 24 and 25. hoc redibus, *read* heredibus.
25. item *read* idem. *After* supra *add* sub titulo (*V., W.*).

1. The first is the general
 2. The second is the particular
 3. The third is the specific
 4. The fourth is the individual
 5. The fifth is the particular
 6. The sixth is the specific
 7. The seventh is the individual
 8. The eighth is the particular
 9. The ninth is the specific
 10. The tenth is the individual

bertina patronum eius legitima hereditas patrona
 ue legem duodecim tabularum refertur. KP DCCXXX
 IDEM eodem libro post familiam patroni uocat pretor
 patronū et patronam. Idem liberos et parentes patro
 ni et patronē. deinde uirum et uxorem mox cognatus 5
 patroni et patronē quod si his qui decessit libero fuit
 ex remacipationē manumissus lex quidem duodecim
 tabularum manumissoris legitima hereditatem detu
 lit sed pretor equitate motus decē psonas cognatorum
 ei pretulit has patrem matrem filium filiam, auū 10
 auīā, nepote neptem fratrem sororem ne quis occan
 sionem iuris sanguinis necessitudinem uinceret sed impe
 rator noster inhereditatibusque ab intestato defe
 runtur eas solas personas uoluit admitti, quibus deci
 mē immunitate ipse tribuit 15

Line.

1. patronum, *read* patrono.
- 1 *and* 2. patronauē, *read* patronaeue.
2. legem, *read* lege; *for* refertur, defertur.
4. idem, *M. reads* item, *Huschke retains*.
5. cognatus, *read* cognatos,
6. his = is; libero, *read* liber.

Line.

7. *Before* ex *M. inserts* nec; remacipa
 tionē, n *wanting before* c; *read*,
 remancipatione.
8. manumissoris, *read* manumissori; legi
 tima, *read* legitimam.
10. auū, *read* auum.
11. nepote „ nepotem.
- 11 *and* 12. occansionem, *read* occasione.
15. immunitate, *read* immunitatem.

TEXT OF THE COLLATIO,
WITH
TRANSLATION AND NOTES.

(LEX DEI QVAM PRAECEPIT DOMINVS AD MOYSEN.)

LIBER PRIMVS

(TITVLVS I.)

DE SICARIIS (ET HOMICIDIS CASV VEL VOLVNTATE).

I. 1. 1 MOYSES dei sacerdos haec dicit :

Si quis percusserit hominem ferro et occiderit eum, mortem
2 moriatur. si autem manu lapide, quo mori possit, percusserit et
3 mortuus fuerit, homicida est: mortem moriatur. si autem per
inimicitiam inpulerit eum uel in miserit super eum aliquod uas ex
4 insidiis et mortuus fuerit, uel per iram percusserit eum manu et
mortuus fuerit, mortem moriatur.

I. 2. 1 Paulus quoque libro quinto sententiarum sub titulo ad legem

Corneliam de sicariis et ueneficis dicit :

Lex Cornelia poenam deportationis infligit ei, qui hominem
occiderit eiusque rei causa furtive faciendi cum telo fuerit, et qui
uenenum hominis necandi causa habuerit uendiderit parauerit.
faisumue testimonium dixerit quo quis periret, mortisue causam
2 praestiterit. quae omnia facinora in honestiores poena capitis
uindicari placuit: humiliores uero aut in crucem tolluntur aut
bestiis subiciuntur.

I. 3. 1 Ulpianus Libro VII. de officio proconsulis sub titulo de sicariis
et ueneficis :

Capite primo legis Corneliae de sicariis cauetur, ut is
praetor iudexue quaestionis, cui sorte obuenerit quaestio de
sicariis eius quod in urbe Roma propiusue mille passus factum

c. 2. 1 = *Paulus v. 23, 1. Cf. Cicero pro Cluentio 54, 143: iubet lex (Cornelia de
sicariis) . . . iudicem quaestionis . . . cum iis iudicibus qui ei obuenerint . . . quaerere
de ueneno . . . quicumque fecerit uendiderit emerit habuerit dederit. quid eadem lex
statim adiungit? . . . "deque eius capite quaerito" cet.*

c. 2. 2. *Paulus v. 23, 2 is restored from this passage.*

Lines 1-2. Circular brackets indicate, throughout, words not in the assumed Archetype.

Line 7. *dei sacerdos*. In the Bible Moses is never styled Priest, but always Servant of God. His brother Aaron and his descendants were appointed priests. *Dei sacerdos* may be a pointed contrast to *Iuris sacerdos*—a term applied to the Roman Jurist.

Lines 8-13. Numb. xxxv. 16: And if he smite him with an instrument of iron, *so that he die, he is a murderer*; the murderer shall surely be put to death.

17: And if he smite him with throwing a stone, wherewith he may die, and he die, he is a murderer; the murderer shall surely be put to death.

18: Or if he smite him with an *hand weapon of wood* wherewith he may die, and he die, he is a murderer; the murderer shall surely be put to death.

20: But if he thrust him of hatred or hurl at him, by laying of wait that he die;

THE LAW OF GOD WHICH THE LORD ORDAINED UNTO MOSES.

FIRST BOOK

FIRST TITLE.

OF ASSASSINS AND MANSLAYERS, WHETHER BY ACCIDENT OR WILFULLY.

MOSES the Priest of God says thus :

If one smite a man with an implement of iron, and slay him, let him surely die.

Or if he smite him with the hand, with a stone, wherewith he may die, and he die, he is a manslayer ; let him surely die.

Or if in enmity he thrust at him or cast upon him some vessel from an ambush, and he die, or he smite him in anger with the hand and he die, let him surely die.

Paulus, also, in the Fifth Book of "The Sentences" under the Title "On the Lex Cornelia concerning Murderers and Poisoners," says :

The Lex Cornelia inflicts the punishment of deportation on one who has slain a human being ; was in possession of a weapon for that purpose or for that of committing a theft ; had sold, or procured, poison in order to kill a human being ; gave false testimony to compass another's death, or in any other way occasioned death. It is settled law that all such crimes, committed by persons of honourable standing, are visited with the capital penalty. Offenders of the lower orders are crucified or thrown to the wild beasts.

Ulpian, in his "Pro-Consular Functions," Book VII., under the Title "Of Assassins and Poisoners" :

In the First Chapter of the Lex Cornelia concerning Assassins, it is provided that the Praetor or investigating judge to whom the judicial inquiry *de sicariis* into acts committed at Rome or within a mile of the city has been assigned by lot, should,

PAGE 56, lines 8-13 (*cont.*). 21 : Or in enmity smite him with his hand that he die : he that smote him shall surely be put to death, for he is a murderer ; *the revenger of blood shall slay the murderer when he meeteth him.* The italicised passages are omitted or condensed in the Collatio.

Line 9. *manu lapide.* Huschke reads *manu lapideus*, "with the hand or with the stone." This is not in accordance with the Septuagint, nor with the original Hebrew. *Eben Yad*, which means a big stone, that is grasped with the hand. (Rashi *in loco*.)

Lines 16, etc. Chap. 2 recurs in Title viii., chap. 4, on False Testimony, which was an offence under this *Lex Cornelia*.

sit, uti quaerat cum iudicibus, qui ei ex lege sorte obuenerint de capite eius, qui cum telo ambulauerit hominis necandi furtiue faciendi causa, hominemue occiderit, cuiusue id dolo malo factum erit. et reliqua.

I. 3. 2 Relatis uerbis legis modo ipse loquitur Vlpianus :

5

Haec lex non omnem, qui cum telo ambulauerit, punit, sed eum tantum, qui hominis necandi furtiue faciendi causa telum gerit, coercescit. conpescit item eum, qui hominem occidit, nec adiecit cuius condicionis hominem, ut et ad seruum et peregrinum pertinere haec lex uideatur.

10

I. 4. 1 Item Paulus libro qui supra, et titulo dicit :

Homicida est, qui aliquo genere teli hominem occidit mortisue causam praestitit.

DE CASVALIBVS HOMICIDIS.

I. 5. 1 Moyses legaliter dicit :

15

Si autem subito non per inimicitias inmiseric super eum
2 aliquod uas non insidians uel lapidem, quo moriatur, non per
dolum et ceciderit super eum et mortuus fuerit, si autem non
3 inimicus eius fuerit neque quaesierit male facere ei, iudicabitis
inter eum, qui percussit, et proximum mortui secundum iudicia
4 haec, et liberabitis percussorem.

20

I. 6. 1 Ulpianus libro et titulo qui supra relati :

Distinctionem casus et uoluntatis in homicidio seruari
2 rescripto Hadriani confirmatur. uerba rescripti : 'Et qui ho-
minem occidit absolui solet, sed si non occidendi animo id
admisit : et qui non occidit, sed uoluit occidere, pro homicida
3 damnatur. e re itaque constituendum est : ecquo ferro percussit
Epafroditus ? nam si gladium instrinxit aut telo percussit, quid

25

c. 6. *Marcian cites this Rescript, Digest. xlviii. 8, 1, 3.*

Lines 16-21. Num. xxxv. 22-25 : "But if he thrust him suddenly without enmity, or have cast upon him anything without laying of wait, or with any stone wherewith a man may die, *seeing him not*, and cast it upon him, that he die, and was not his enemy, neither sought his harm : *then the congregation shall judge* between the slayer and the *revenger of blood, according to these judgments : and the congregation shall deliver the slayer out of the hand of the revenger of blood, and the congregation shall restore him to the city of his refuge, whither he has fled : and he shall abide in it unto the death of the High Priest, which was anointed with the holy oil.*" This law had long been obsolete. Since 70 c.e. the Jews had no criminal jurisdiction, and even before that date, as long as Palestine was under the Roman rule, they could not exercise it without the Procurator's consent. Hence, the compiler of the *Collatio* omits the references to the Avenger of Blood in this text as well as above in Num. xxxv. 21, and condenses the italicised passages.

together with the *iudices* legally assigned him by lot, enquire into the status of anyone who has gone about with a weapon for the purpose of committing murder or theft, or has slain a man, or has wilfully caused this offence to be committed.

Ulpian quotes the terms of the law, and then in his own words continues :

This law does not punish the bearing of arms as such, but only where weapons are carried with the object of murder or theft. It likewise punishes the perpetrator of a murder, and adds no qualification concerning his status ; hence, this law seems also to apply to a slave and a foreigner.

Paulus, in the Book and under the Title above quoted, says :

A homicide is one who has slain a man with any kind of weapon, or otherwise occasioned death.

CONCERNING ACCIDENTAL DEATHS.

Moses states the legal rule :

But if he cast a vessel upon one suddenly, not in enmity nor lying in wait,

Or a stone by which he may die, and it be not done wilfully, and it fall upon him and he die ; if, however, he had not been his enemy, nor sought to harm him ;

ye shall judge between him who smote and the next kinsman of the slain according to these judgments, and ye shall set the smiter free.

Ulpian, in the Book and under the Title above cited :

It is confirmed by a Rescript of Hadrian, that a distinction should be observed in homicide between accident and wilfulness.

Terms of the Rescript : One who has slain another is acquitted, provided that the deed was committed without intent to slay ; while a man who did not slay but intended to slay is condemned as a homicide. The point must be determined by the facts. With what instrument did Epafroditus strike the blow ? For if

dubium est, quin occidendi animo percusserit? si clauē percussit aut cucuma aut, cum forte rixaretur, ferro percussit, 4 sed non occidendi mente. ergo hoc exquirite et si uoluntas occidendi fuit, ut homicidam seruū supplicio summo iure iubete affici.’

5

I. 7, 1 Paulus libro et titulo qui supra :

Qui hominem occidit, aliquando absoluitur et qui non occidit, ut homicida damnatur : consilium enim uniuscuiusque, non factum puniendum est. ideoque si cum uellet occidere, casu aliquo perpetrare non potuit, ut homicida punitur : et is, qui casu 10 [iactu] teli hominem imprudenter ferierit, absoluitur. quod si in rixa percussus homo perierit, quoniam ictus quoque ipsos contra unumquemque contemplari oportet, ideo humiliores in ludum aut in metallum damnantur, honestiores dimidia parte bonorum multati relegantur.

15

I. 8, 1 Item Gregorianus libro IIII. [sub titulo] ad legem Corneliam de sicariis et ueneficis talem constitutionem ponit :

Imperator Antoninus A. Aurelio Herculano et aliis militibus. Frater uester rectius fecerit, si se praesidi prouinciae optulerit : cui si probauerit non occidendi animo iustam a se percussam 20 esse, remissa homicidii poena secundum disciplinam militarem sententiam proferet. Proposita prid. kal. Febr. Laeto bis cons.

p. C. 215 I. 9, 1 Item Gregorianus eodem titulo et libro talem constitutionem ponit :

Imp. Alexander A. Aurelio Flauio et aliis militibus. Si 25 modo pro quo libellum dedistis, non dolo praestitit mortem, minime perhorrescat : crimen quippe ita contrahitur, si et uoluntas occidendi intercedat. ceterum ea, quae ex improviso casu potius, quam fraude accidunt, fato plerumque, non noxae p. C. 222 inputantur. Prop. XIII. kal. Aug. Alexandro cons.

30

c. 7, 1 = Paulus v. 23, 3.

c. 8 = Cod. Iust. ix. 16, 1, which adds the words (lines 27–30): crimen—inputantur.

c. 9, crimen . . . inputantur in Cod. Iust. ix. 16, 1.

Line 4. *Supplicio summo*. Huschke has *supplicio crucis*. The *supplicium crucis*, though a common punishment among the Romans for slaves and the lower orders, was unknown among the Jews, whose modes of capital punishment were Stoning, Burning, Beheading and Strangling.

Line 11. [iactu]. Square brackets indicate, throughout, words omitted in the Codices and supplied by the Editors.

Lines 12, 13. *Quoniam ictus quoque ipsos contra unumquemque contemplari oportet*. Cf. Dig. xlviii. 8, l. 17, *Si in rixa percussus homo perierit, ictus uniuscuiusque in hoc collectorum contemplari oportet*.

Line 22. *Proferet*. Huschke reads *feret*, "He will receive sentence." Huschke argues that the reading *proferet*, "He shall pronounce sentence," would necessitate at the beginning of line 15 *qui si* instead of *cui si*,

he drew a sword or struck with any other lethal weapon, what doubt is there that he struck with intent to slay? If he struck with a key, a brazen pot, or an iron implement in a chance brawl, he struck with a weapon, but not with intent to kill.

Enquire, therefore, thoroughly into this point; and if there has been an intent to murder, sentence the slave to suffer the extreme penalty of the law as a homicide.

Paulus, in Book and Title as above:

A man who has slain another is sometimes acquitted, while one who has not slain is convicted as a homicide. In each and every case, the intent, and not the deed, is to be punished. Where, accordingly, one intended to kill and, through some chance, was unable to perpetrate the deed, he is punished as a homicide; but where one has killed a man unwittingly, by the chance throw of a weapon, he is acquitted.

Should, however, a man who has been struck in a brawl die, since it is our duty to take note of the actual blows given by each person, offenders of base degree are (in such cases) condemned to the gladiatorial contests or the mines, those of honourable rank forfeit half their property and are exiled.

The Gregorian Code, likewise, in the Fourth Book, under the Title, "On the Lex Cornelia concerning Assassins and Poisoners," gives the following constitution:

The Emperor Antoninus to Aurelius Herculanius and other soldiers: Your comrade would act more correctly if he gave himself up to the president of the province. If he satisfy him that he struck Justa with no murderous intent, the punishment for homicide will be remitted, and the President will pronounce sentence according to military regulations. Issued, the 31st of January, in the second consulship of Laetus.

The Gregorian Code, under the same Title and in the same Book, gives the following constitution:

The Emperor Alexander to Aurelius Flavius and other soldiers: If the party for whom you have forwarded a petition did not cause death wilfully, he need be under no apprehension, since a crime is only committed where the intent to kill enters into the deed. But acts which occur unexpectedly, by chance rather than of ill design, are generally ascribed to fate, and not counted to any one as guilt. Issued 20th July, in the consulship of Alexander.

I. 10, 1 Item Gregorianus eodem libro et titulo tale rescriptum dedit :

Exemplum s(acrarum) l(itterarum) dd. nn. Haue Agatho
k(arissime) n(obis). Qualitas precum Iuli Antonini clementiam
nostram facile commouit : quippe quod adseueret homicidium se
non uoluntate, sed casu fortuito fecisse, cum calcis ictu mortis
occasio praebita uideatur. quod si ita est neque super hoc ambigi
poterit, omni eum metuac suspicione, quod ex admissae rei discrimine
sustinet, secundum id quod adnotatione nostra comprehensum
est, uolumus liberari. Dat. prid. k. Decemb. Diocletiano Aug. IIII.

p. C. 290 et Maximiano cons.

I. 11, 1 Ulpianus libro et titulo qui supra :

Cum quidam per lasciuiam causam mortis praeuisset,
conprobatum est factum Taurini Egnati proconsulis Baeticae a
2 diuo Hadriano, quod eum in quinquennium relegasset. uerba
consultationis et rescripti ita se habent : ' Inter Claudium, optime
imperator, et Euaristum cognoui, quod Claudius Lupi filius in
conuiuio, dum sago iactatur, culpa Mari Euaristi ita male
acceptus fuerit, ut post diem quintum moreretur. atque adparebat
nullam inimicitiam cum Euaristo ei fuisse. tamen cupiditatis
culpa coercendum credidi, ut ceteri eiusdem aetatis iuuenes
emendarentur. ideoque Mario Euaristo urbe Italia prouincia
Baetica in quinquennium interdixi et decreui, ut impendi causa
duo milia patri eius persolueret Euaristus, quod manifesta eius
3 fuerat paupertas.' V(erba) r(escripti) : ' Poenam Mari Euaristi
recte, Taurine, moderatus es ad modum culpae : refert enim et
in maioribus delictis, consulto aliquid admittatur an casu.' et
4 sane in omnibus criminibus distinctio haec poenam aut iustam
prouocare debet aut temperamentum admittere.

I. 12, 1 Modestinus libro differentiarum sexto sub titulo de scientibus
et ignorantibus generaliter loquitur :

Nonnumquam per ignorantiam delinquentibus iuris ciuili
uenia tribui solet, si modo rem facti quis, non iuris ignoret : quae
scilicet consilio delinquentibus praestari non solet. propter quod

c. 10 = *Cod. Iust.* ix. 16, 5, *varied thus* : Eum qui adseuerat—uideatur, si hoc —
poterit, omni metu, *cet.*

c. 11 = *Dig.* xlviii. 8, 4, § 1.

c. 11, 3 refert et — 4 admittere = *Dig.* xlviii. 19, 5, § 2, *as if they were all the words of Ulpian.*

Line 2. *Haue Agatho K(arissime) n(obis).* For similar forms of address cp. Haenel, Preface to his Edition of the Theodosian Code, p. xxxix., footnote 239.

Line 13. *Baeticae.* Baetica was the ancient designation applied to Andalusia and part of Granada.

Line 14. *Relegasset.* Relegation is a prohibition against entering one's province, or Rome, or any particular district, either for life or for a limited term. *Dig.* xlviii. 22, 14. It may also mean restriction to an island or to any particular place (*lata fuga*.) (*Dig. ibid.* 22, 7; *ibid.*, 22, 5). It involved no forfeiture of property or loss of status (*Dig. Ibid.* 22, 4, and 22, 18).

LEGUM COLLATIO.

The Gregorian Code, in the Book and under the Title already quoted, has likewise given the following Rescript :

Copy of an Imperial Letter. "The Emperor's greetings to our well-beloved Agatho. The character of the petition of Julius Antoninus readily appealed to our clemency. For he urges that he committed the homicide not wilfully, but by pure accident, the death having apparently been caused by a kick of the heel. If this is so, beyond the possibility of a doubt, we desire that he be relieved, in accordance with the contents of our note, of all the fear and apprehension under which he labours owing to the grave character of his act." Issued 30th November, in the fourth year of the Emperor Diocletian, and in the Consulship of Maximian.

Ulpian, in the Book and under the Title above cited :

A certain man having, in a frolic, caused another's death, Taurinus Egnatius, Pro-Consul of Baetica, sentenced him to five years' exile. The sentence was approved by the Emperor Hadrian.

The terms of the case remitted to the Emperor, and of the latter's Rescript, are as follows : "Your Imperial Majesty, I had before me the following case of Claudius and Evaristus. Claudius, the son of Lupus, while being tossed in a cloak at a banquet, was, through Marius Evaristus' fault, so roughly handled that, five days after, he died. It was clear that there was no ill-will between him and Evaristus. Nevertheless, I thought that recklessness should be checked, so that other young men of the same age might mend their ways. I therefore banished him for five years from Rome, Italy, and the province of Baetica, and ordered him to pay 200 sester tia as costs to the deceased youth's father, whose poverty was manifest."

The terms of the Rescript: "You have acted rightly, Taurinus, in mitigating the penalty (and adjusting it) to the character of the offence; for even in the more serious classes of delicts, it is of moment whether a thing was done designedly or by accident, and in all crimes this difference will necessarily require the infliction of the full penalty or permit of a mitigation."

Modestinus, in the Sixth Book of "Distinctions," under the Title "Of Those who Act Willingly or in Ignorance," says in general terms :

Those who have committed offences in ignorance are sometimes pardoned by the civil law, provided the ignorance was of

necessarium est addita distinctione considerare, utrum sciente an ignorante aliquo quid gestum proponatur. et reliqua.

I. 13, 1 Paulus libro et titulo qui supra :

Qui telum tutandae salutis causa gerit, non uidetur hominis
2 occidendi causa portare. teli autem appellatione non tantum 5
ferrum continetur, sed omne, quod nocendi causa portatum est.

(TITVLVS II.)

DE ATROCI INIVRIA.

II. 1, 1 Moyses dicit:

Si autem contenderint duo uiri et percusserit alter alterum 10
lapide aut pugno et non fuerit mortuus, decubuerit autem in
2 lectulo, et si surgens ambulauerit homo foris in baculo, sine
crimine erit ille, qui eum percusserat praeter ac cessationis eius
mercedem dabit ei et medico impensas curationis.

II. 2, 1 Ulpianus libro singulari regularum sub titulo de iniuriis: 15

Iniuria, si quidem atrox, id est grauis, non est, sine iudicis
arbitrio aestimatur. atrocem autem aestimare solere praetorem
idque colligi ex facto, ut puta si uerberatus uel vulneratus quis
fuerit. et reliqua.

II. 3, 1 Papinianus libro definitionum secundo sub titulo de iudi- 20
catis :

Per hominem liberum noxae deditum si tantum adquisi-
tum sit, quantum damni dedit, manumittere cogendus est a
praetore qui noxae deditum accepit: sed fiducia iudicio non
tenetur.

25

c. 13, 1 = *Dig.* xlviii. 6, 11, § 2. *Paul.* v. 23, 7 is restored from this passage.

c. 13, 2. *Paul.* v. 23, 7 is restored from this passage.

Lines 10-14. *Exod.* xxi. 18-19: "And if men strive together and one smite another with a stone or with his fist, and he die not, but keepeth *his* bed" [the Latin of the *Collatio*, *decubuerit*, is nearer to the Hebrew, which means "and fall on his bed"]; "If he rise again and walk abroad upon his staff, then shall he that smote him be quit; only he shall pay for the loss of his time and shall cause him to be thoroughly healed."

Line 12. *Foris*. The reading *fortis* in all the MSS. may point to the Rabbinical exegesis which interprets the phrase על משענתו, usually translated "on his staff" as meaning "in sound health and strength." If so, the author of the *Collatio*, by giving, according to the MSS., *fortis in baculo*, has combined the two opposite renderings of the same Hebrew phrase, and omitted to translate the word בחוץ.

Line 14. *Et medico impensas curationis*. So Targum of Onkelos, ואגר אסיא ישלם "He shall pay the doctor's fee." The assailant is not to give the injured man a sum of money for treatment which the sufferer may expend for any purpose he pleases. He is only liable for the costs of medical advice and treatment actually incurred. (*Nachmanides in loco*.)

LEGUM COLLATIO.

the fact and not of the law. For pardon is naturally not extended to such as offend intentionally. It is therefore essential, bearing this distinction in mind, to consider whether an act is stated to have been done knowingly or unwittingly, etc.

Paulus, in the Book and under the Title above cited :

Whosoever carries arms for self-protection is not regarded as carrying them for the purpose of committing homicide.

The term weapon (*telum*) denotes not merely an implement of steel, but anything carried for the purpose of causing injury.

SECOND TITLE.

CONCERNING OUTRAGE.

Moses says :

If two men strive together and one strike the other with a stone or with the fist, and he die not but take to his bed ;

And if the man arise and go about abroad on a staff, he who hath struck him shall be guiltless, except that he shall recompense him for his enforced idleness, and pay the physician the cost of healing.

Ulpian, in his Single Book of Rules, under the Title "Of Injuries" :

An injury, if it is not outrageous, that is, of an aggravated character, is assessed for damages without recourse to the *judex* for decision. Where it is of an outrageous character, the Praetor usually assesses the damages. This is gathered from the facts of the case, as, for example, when a man has been beaten or wounded.

Papinian, in the Second Book of the Definitions, under the Title "Of Those Adjudged" :

If a free man, surrendered in a noxal action, in satisfaction of judgment, acquired for his master the equivalent of the damages he caused, the master who accepted him in noxal surrender is to be compelled by the Praetor to release him, but is not liable in a fiduciary action.

PAGE 64, lines 16-17. *Sine iudicis arbitrio*. Does this refer to the Praetor? In cases of ordinary *iniuria*, the Praetor allows the sufferer to claim a specific sum; and the judge condemns the wrong-doer to pay any sum not exceeding this, to be fixed at his discretion. (Gaius iii. 224; Just. Inst. iv. 4, 7.)

Lines 22-25. Cp. Gaius iv. 75-81.

Lines 24-25. *Sed fiduciae iudicio non tenetur*. The surrender of the free man had not been in *fiducia* (as e.g. in the mancipation by a father of a son with a condition of remancipation, Gaius i. 140), and consequently there can be no fiduciary action. Whether a noxal surrender by a father of a son was analogous to a mancipation was disputed. (Gaius iv. 79.)

II, 4, 1 Ulpianus libro XVIII. ad edictum sub titulo si fatebitur iniuria occisum esse, in simplum et cum diceret:

Rupisse eum utique accipiemus, qui uulnerauerit, uel uirgis uel loris uel pugnīs caedit, uel telo quoue alio uis genere sciderit hominis corpus uel tumorem fecerit: sed ita demum, si damnum datum est. ceterum si in nullo seruum pretio uiliorem deterior-
emue fecerit, Aquilia cessat iniuriarumque erit agendum. ergo et si pretio quidem non sit deterior factus seruus, uerum sumptus in salutem eius et sanitatem facti sunt, in haec nec mihi uideri damni Aquilia lege [agi] posse.

II, 5, 1 Paulus libro singulari et titulo de iniuriis:

Generaliter dicitur iniuria omne, quod non iure fit: specialiter alia est contumelia, quam Graeci [ὑβρίν] appellant, alia culpa, quam Graeci ἀδικηματα dicunt, sicut in lege Aquilia damnum iniuriae accipitur, alia iniquitas et iniustitia, quam Graeci] ἀδυσίαν uocant. nam cum praetor non iure aduersum nos pronuntiat, iniuriam nos accepisse dicimus: unde apparet non esse uerum, quod Labeo putabat, apud praetorem iniuriam ὑβρίν dumtaxat
significare. commune omnibus iniuriis est, quod semper aduersus
bonos mores fit idque non fieri alicuius interest. hoc edictum ad
eam iniuriam pertinet, quae contumeliae causa fit. fit autem iniuria uel in corpore, dum caedimur, uel uerbis, dum conuicium patimur, uel cum dignitas laeditur, ut cum matronae uel
praetextatae comites abducuntur. iniuriarum actio aut legitima

c. 4 = Dig. ix, 2, 27, 17.

Line 2. *Et cum diceret.* So the MSS. (B.V.); *et cum dicere* (W.). The superscription (Lines 1 and 2) with the different ending in the MSS. *cum doceret* (B.W.), *cum docere* (V.), recurs xii. 7, 1. Huschke conjectures *ut condiceret*; and the meaning of the passage would be, if the defendant admits that the plaintiff's slave or quadruped had been unlawfully slain by him, the plaintiff should claim simple damages. *Ut condiceret* would be the conclusion of the terms in the edict on which Ulpian comments. Lenel (*Zeitschrift der Savigny-Stiftung Röm. Abteilung*, viii, 195) has rejected this reading. Mommsen explains *et cum diceret* to mean "Ulpian also says." This is not convincing.

Lines 5 and 6, *Si damnum datum est*, that is material loss, deterioration of value.

Line 7. *Aquilia cessat.* The terms of the first clause of the *Lex Aquilia* are preserved in the Digest (ix. 2, 1, 2). *Qui seruum seruamue alienum alienamue, quadrupedemue pecudum iniuria occiderit, quanti id in eo anno plurimi fuit, tantum aes dare domino damnas esto.* The third clause made provision for other damage (Gaius iii., 217). The *Lex Aquilia*, when the facts were traversed, gave double damages (Gaius iii. 216).

Line 11. *Singulari et.* Huschke suggests in his notes that the passage here and also further on (ii. 6, 1), ought to be V. Regular Sub, "In the fifth book of Rules, under the title *de iniuriis*." His grounds are that, while all the books mentioned in the Collatio are cited elsewhere, we have no reference in any other work to a book *de iniuriis* by Paulus; and that the very passage here quoted occurs in Paulus, Rules, v. 4 at the beginning.

Ulpian, in the Eighteenth Book on the Edict, under the Title

"In confessions of wrongful slaying, simple damages are claimed," and where he says:

We shall regard as "breaking" all cases of wounding, beating with rods, thongs or fists; cutting another's body with a weapon or any other implement, or causing a swelling; but only when damage has been caused. But if the value of the slave has in no wise been diminished, an Aquilian action does not lie; the action which will apply will be one for outrage. On this principle, where there has been no deterioration in the value of the slave, but expenses have been incurred in order to restore him to sound health, an Aquilian action for damages cannot, in my opinion, be brought.

Paulus, in his Single Book, and under the Title "Of Injuries":

The term *Iniuria* denotes generally anything done unlawfully. Specifically it may either mean insult, called by the Greeks ὕβρις; fault, which the Greeks call ἀδίκημα, and which is the sense in which the phrase *damnum iniuriæ* in the Lex Aquilia is taken; or iniquity and injustice, which the Greeks term ἀδικία; for when the Praetor decides against us, not according to the law, we say that we have suffered an injury. Hence it is clear that Labeo is incorrect in his view that the term *iniuria*, when used by the Praetor, is exclusively restricted to insult. A common element of all injuries is that they always offend against morality, and that it is to someone's interest that they should not occur. This Edict applies to that particular class of injury which is in the nature of insult.

We are injured either in body when we are beaten, or by words when we suffer abuse, or when honour is wounded, as when a lady's companions or those of a girl are abducted.

An action for outrage is statutory or praetorian. A statutory

PAGE 66, line 13. *Alia culpa*. Poste, in his edition of Gaius, p. 15, has a different classification. "Negligent violation of the Law (*culpa*, ἀμαρτημα) is distinguished on the one side from misadventure (*casus*, ἀτύχημα), and, on the other, from intentional violation of the Law (*dolus*, ἀδικημα), which again is distinguished from deliberate violation of the Law (ἀδικία)."

Line 22. *Uerbis*. Huschke has *auribus*. This emendation makes the passage more symmetrical: an outrage to the body by an assault, to the sense of hearing by a shout, and to the sentiment of honour by abduction of companions. According to the text, *uerbis* should have as its parallel in the first clause *corpore*, instead of *in corpore*. In support of his view, that the classification of Paulus follows the nature of the injury and not the mode of its infliction, Huschke quotes Auct. ad Her. 4, 25: "*Iniuriæ sunt, quæ aut pulsatione corpus aut conricio aures, aut aliqua turpitudine uitam alicuius uiolant.*"

est aut honoraria. legitima ex lege duodecim tabularum: 'qui iniuriam alteri facit, quinque et uiginti sestertiorum poenam subito.' quae lex generalis fuit: fuerunt et speciales, uelut illa: 'si os fregit libero, CCC [si] seruo, CL poenam subito sestertiorum.'

II. 6, 1 Idem Paulus eodem libro singulari sub titulo quemadmodum iniuriarum agatur:

'Qui autem iniuriarum,' inquit, 'agit, certum dicat, quid iniuriae factum sit et taxationem ponat non minorem quam
2 quanti uadimonium fuerit.' certum dicit, qui suo nomine 10
demonstrat iniuriam, neque ita, ut per disiunctionem hoc aut illud accidisse comprehendat, sed ut necesse habeat aut unam nomine
3 cogatur probare. certum autem an incertum dicat, cognitio ipsius
praetoris est. demonstrat autem hoc loco praetor non uocem 15
4 agentis, sed qualem formulam edat. certum non dicit, qui dicit
pulsatum se siue uerberatum. sed et partem corporis demonstrat
et quem in modum, pugno puta an fuste an lapide, sicut formula
proposita est: 'quod Auli Ageri mala pugno percussa est.' illud
non cogitur dicere, dextra an sinistra, nec qua manu percussa sit. 20
5 item si dicat infamatum se esse, debet adicere, quemadmodum
infamatus sit. sic enim et formula concepta est: 'quod Numerius
Negidius libellum misit Aulo Agerio infamandi causa.'

II. 7, 1 Paulus libro sententiarum [quinto] sub titulo ad legem
Corneliam de sicariis et ueneficis:

Causa mortis idonea non uidetur, cum caesus homo post aliquot dies officium diurnae uitae retinens decessit nisi forte fuerit ad necem caesus aut letaliter uulneratus.

c. 7. Paulus v. 23, 5 is restored from this passage.

Line 6. *Eodem libro singulari.* See above, note on page 66, line 11.

Line 9. *Non minorem.* Otherwise he would not be able to claim a larger amount from the defendant, or on his failure to pay, from the security (Gaius iv. 57). Huschke's reading is *non maiorem*. Though condemned by Mommsen, it seems more reasonable. If the plaintiff claimed more and was awarded less than the amount fixed by the praetor as *uadimonium*, he might in an action against the security be non-suited on the ground of *plus petitio*.

Lines 24-28. The closing paragraph belongs, according to Huschke, to Title i., but as the distinction it expresses is also found in the Biblical text at the beginning of Title iii., it was placed by an unthinking scribe after that text whence it was transferred to its present position. It may be urged with equal plausibility that the right place of this paragraph is at the beginning of Title ii., but was placed at the end of the title owing to the analogy with the succeeding Biblical text in the next title.

action is based on the following law of the XII Tables: "He who hath done wrong to another, let him suffer a penalty of twenty-five sesterces." This was a general law. There were also specific laws such as the following: "If one hath broken a limb of a free man, let him suffer a penalty of three hundred sesterces; if of a slave, one hundred and fifty sesterces."

The same Paulus, in the same Single Book, under the Title of "Procedure in Actions for Outrage":

The plaintiff in an action for outrage must state exactly the nature of the outrage committed, and must set down as damages a sum not less than the amount of the security.

An exact statement is where the plaintiff indicates the injury by its proper name; not so, however, when he uses a term which implies alternatively that either this or that happened to him; but it is essential that he should designate each thing by its proper name; or if he includes several things in one designation, he will be under the necessity of proving that they all happened. It lies within the Praetor's jurisdiction to determine whether the statement is exact or not. At this stage, however, the Praetor does not set forth the plaintiff's case, but merely settles the formula he will issue.

It is not an exact statement to say that he has been beaten or thrashed, but he must also indicate which part of the body was struck, and in what way; whether, for example, with the fist, a cudgel or a stone, as is set forth in the formula: "Whereas Aulus Agerius (the plaintiff) was struck on the cheek by Numerius Negidius (the defendant) with the fist." He is not, however, bound to state on which cheek, whether on the right or left, nor with which hand he was struck.

Again, if he asserts that his character has been defamed, he must add in what way it was defamed, for the formula too is thus framed: "As Numerius Negidius (defendant) sent a lampoon to Aulus Agerius (plaintiff) with the intent to defame him."

Paulus, in the Fifth Book of "The Sentences," under the Title "On the Cornelian Law concerning Assassins and Poisoners":

It is not regarded as a direct cause of death when a person who has been assaulted dies after the lapse of some days, during which he has carried on his daily occupation, except where one was beaten to death or mortally wounded.

Page 68, lines 27-28. *nisi forte fuerit ad necem caesus aut letaliter vulneratus.* In such a case the wounding would be considered the cause of death, although the victim lingered for some time.

DE IVRE ET SAEVITIA DOMINORVM.

III. 1, 1 Moyses dicit:

Si quis percusserit seruum aut ancillam uirga et mortuus
2 fuerit in manibus eius, iudicio uindicetur. quod si superuixerit 5
die uno aut duobus, non uindicabitur, pretium enim ipsius est.

III. 2, 1 Paulus libro sententiarum [quinto] sub titulo ad legem Corne-
liam de sicariis et ueneficis dicit:

Seruus si plagis defecerit, nisi id dolo fiat, dominus homi-
cidii reus non potest postulari: modum enim castigandi et in 10
seruorum coercitione placuit temperari.

III. 3, 1 Ulpianus libro octauo de officio proconsulis sub titulo de domi-
norum saeuitia:

Si dominus in seruum saeuierit uel ad inpudicitiam turpem-
que uiolationem compellat, quae sint partes praesidis, ex rescripto 15
diui Pii ad Aurelium Marcianum proconsulem Baeticae manifes-
2 tatur. cuius rescripti uerba haec sunt: Dominorum quidem
potestatem in suos seruos inlibatam esse oportet nec cuiquam
hominum ius suum detrahi: sed dominorum interest, ne auxilium 20
3 his, qui iuste deprecantur. ideoque cognosce de querellis eorum,
qui ex familia Iuli Sabini ad statuam confugerunt, et si uel durius
habitos, quam aequum est, uel infami iniuria adfectos cognoueris,
uenire iube, ita ut in potestatem Sabini non reuertantur. quod si
meae constitutioni fraudem fecerit, sciet me admissum seuerius 25
4 executurum. diuus etiam Hadrianus Umbram quandam matro-

c. 2. *Paulus v., 23, 6 is restored from this passage.*

c. 3 = *Dig. i., 6, 2.*

Lines 4-6. Exod. xxi. 20, 21: "And if a man smite his servant or his maid with a rod, and he die under his hand, he shall be surely punished. Notwithstanding, if he continue a day or two he shall not be punished, for he is his money."

Line 5. *Uindicetur* is nearer to the Hebrew, יָקָם יָקָם "Let him surely be avenged," than the rendering in the Authorised Version, "Let him be punished."

Line 10. *Enim*. The connection between the two sentences by the word *enim* is difficult. Hence Cramer's emendation *et si*, that is to say, even though masters must exercise moderation in the chastisement of their slaves, still where there was no intent to kill, the punishment of slaves, resulting in death, is not murder. Huschke suggests *tamen*; "nevertheless the punishment of slaves should be moderate." Mommsen thinks that after *temperari* some such words as the following have dropped out: *sed tamen etsi eum dominus excessit homicidium non commisit*.

Line 23. *Infami*. According to the Berlin Codex *infamiae*; the sense is "have been starved."

THIRD TITLE.

OF THE LEGAL POWER AND CRUELTY OF
MASTERS.

Moses says :

If anyone smite his manservant or his maidservant with a rod and he die under his hand, let him be avenged by process of law ; but if the slave survive for one or two days, he shall not be avenged, for he is his master's money.

Paulus, in the Fifth Book of "The Sentences," under the Title "Of the Lex Cornelia concerning Assassins and Poisoners," says :

If a slave die of a scourging, the master cannot be charged with murder, unless there was an intent to kill ; for it is settled that, even in the correction of slaves, the measure of punishment must be kept within bounds.

Ulpian, in the Eighth Book of "The Proconsular Functions," under the Title "Of the Cruelty of Masters" :

Where a master has behaved with cruelty to his slave, or forces him into a life of shame and vice, the duty of the Provincial President is clearly set forth in the Rescript of the late Emperor Antoninus Pius to Aurelius Marcian, Proconsul of Baetica.

The terms of the Rescript are as follows : The power of masters over their slaves ought to remain unimpaired, nor should any man's rights be taken from him ; but it is in the interest of the masters that relief from cruelty, hunger, or intolerable outrage should not be refused to those who justly cry out.

Take cognisance, therefore, of the complaints of those members of Julius Sabinus' household who have fled for protection to the statue (*i.e.* of the Emperor). And if you will find that they have been treated with undue harshness or subjected to an infamous outrage, order them to be sold with the stipulation that they are never to return into Sabinus' power. If he evades this my ordinance, he will learn that I shall deal more severely with the offence.

The late Emperor Hadrian sentenced a certain lady called Umbra to five years' relegation because she had, for trivial reasons, treated her maids with great brutality.

- nam in quinquennium relegauit, quod ex leuissimis causis ancillas
 III. 3, 5 atrocissime tractaret. item diuus Pius ad libellum Alfi Iuli
 rescripsit [in] haec uerba: 'Seruorum obsequium non solum imperio, sed et moderatione et sufficientibus praebitis et iustis
 6 operibus contineri oportet. itaque et ipse curare debes iuste ac 5
 temperate tuos tractare, ut ex facili requirere eos possis, ne, si apparuerit uel inparem te inpendiis esse uel atrocioire dominationem saeuitia exercere, necesse habeat proconsul u. c., ne quid tumultuosius contra accidat, praeuenire et ex mea iam auctoritate
 a. 152 [te] ad alienandos eos compellere. Glabrione et Homullo cons.' 10
 III. 4, 1 Gregorianus libro XVIII. sub titulo de accusationibus:
 Imp. Diocletianus et Maximianus Augusti Aurelio Sacrato militi. Cum seruum tuum [ui] aegritudinis grauiter oppressum fati munus implere proponas, propter inmoderatam castigationem calumniae accusationem emergere innocentiae ratio, cuius 15
 a. 285 fiduciam geris, non permittit. Prop. non. Decemb. Diocletiano A. III. et Aristobulo cons.

(TITVLVS III.)

DE ADVLTERIIS.

- IV. 1, 1 Moyses dixit: 20
 Quicumque moechatus fuerit mulierem proximi sui, mortem
 2 moriatur qui moechatus fuerit et quae moechata fuerit. quod si aliqui seduxerit uirginem non desponsatam et stuprauerit eam,
 3 dotabit eam sibi in uxorem. quod si rennuerit pater eius et noluerit eam dare illi uxorem, pecuniam inferet patri, in quantum 25
 est dos uirginis.
 IV. 2, 1 Paulus libro singulari de adulteris sub titulo:
 Breuem interpretationem [legis Iuliae] de adulteris coercendis facturum per ipsa capita ire malui ordinemque legis seruare.
 2 et quidem primum caput legis (Iuliae de adulteris) prioribus 30

Lines 21-26. Lev. xx. 10: "And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death."

Exod. xxii. 16, 17: "And if a man entice a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife. If her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins."

Line 27. *libro singulari*, etc. Blume suggests *libro singulari et titulo de adulteriis*. Huschke suggests *initio* instead of *titulo*, and also thinks that in chaps. 3, 4, and 6, the copyist thoughtlessly repeated the error *et titulo*.

LEGUM COLLATIO.

The late Emperor Antoninus Pius likewise sent a Rescript in the following terms in reply to an enquiry from Alfius Julius: The obedience of slaves must be maintained not merely by the exercise of authority, but by reasonable treatment satisfaction of their necessities, and a fair apportionment of tasks.

You should, on your part, therefore, take care to treat your slaves fairly and with moderation, so that you may without difficulty be able to claim them back. Otherwise, on its appearing that their maintenance is beyond your resources, or that you exercise authority with revolting cruelty, the Proconsul may be under the necessity of preventing the mischief of a possible outbreak by forcing you, with my sanction, to part with your slaves. In the Consulship of Glabrio and Omullus.

The Gregorian Constitution, Book XVIII., under the Title "Of Accusations."

The Emperors Diocletian and Maximian to the soldier Aurelius Sacratu: Since you set forth that your slave died a natural death as the result of a severe illness, regard for your innocence, for which you pledge your faith, forbids that a prosecution for malice on account of excessive punishment should be entertained. Issued 5th December, in the Third Year of the Emperor Diocletian and in the Consulship of Aristobulus.

FOURTH TITLE.

OF ADULTERIES.

Moses said:

Whoever committeth adultery with his neighbour's wife, let him surely die, he that committeth adultery and the adulteress.

If anyone seduce a virgin who is not betrothed and defile her, he shall endow her to be his wife.

If her father refuse, and will not give her to him for a wife, he shall pay money to the father according to the dowry of the virgin.

Paulus, in his Single Book of "Adulteries," under the Title:

In writing a short commentary on the Lex Julia concerning the punishment of adulterers, I preferred to go through the chapters themselves, and to follow the order of the Statute.

The first chapter of the Statute repeals several earlier enactments.

IV. 2, 3 legibus pluribus obrogat. secundo uero capite permittit patri,
 [si in] filia sua, quam in potestate habet, aut in ea, quae [eo]
 auctore, cum in potestate esset, uiro in manum conuenerit, adul-
 terum domi suae generiue sui deprehenderit isue in eam rem
 socerum adhibuerit, ut is pater eum adulterum sine fraude occidat, 5
 4 ita ut filiam in continenti occidat. in sui iuris autem filia qui
 adulterum deprehensum occiderit et in continenti filiam, licito
 iure hoc factum Marcellus libro XXXI. digestorum scribit.
 5 auctoritate quoque [legis] patrem posse interficere uel consularem
 uirum uel patronum suum, [si eum] in filia adulterum deprehen- 10
 6 derit, eodem libro Marcellus probat. sed si filiam non inter-
 7 fecerit, sed solum adulterum, homicidii reus est. et si interuallo
 filiam interfecerit, tantundem est, nisi persecutus illam interfecerit:
 continuatione enim animi uidetur legis auctoritate fecisse.

IV. 3, 1 Idem Paulus eodem singulari libro et titulo: 15

Certae autem enumerantur personae, quas uiro liceat occi-
 dere in adulterio deprehensa uxore, quamuis uxorem non liceat.
 2 ergo secundum leges uiro etiam filiofamilias permittitur domi
 suae deprehensum adulterum interficere seruum, et eum qui
 auctoramento rogatus est ad gladium, uel etiam illum qui operas 20
 3 suas, ut cum bestiis pugnaret, locauit. sed et iudicio publico
 damnatum licet interficere in adulterio deprehensum, uel liberti-
 num uel suum uel paternum, et tam ciuem Romanum quam
 4 Latinum. sed et patris et matris et filii et filiae libertum per-
 5 mittitur occidere, quo loco et dediticius habetur. debet autem 25

Lines 7 and 8. *Licito iure*. Huschke supplies *non* before *licito iure*; Cujas suggests *illicito iure*. Both emendations are on the ground that the daughter in this case is *sui iuris*. Cp. *Digest* xlviii. 5, l. 20, *Patri datur ius occidendi adulterum cum filia quem in potestate habet*. But this is Papinian's view, from which Marcellus may have differed.

Line 9. *auctoritate quoque [legis] patrem*; Huschke reads *at de auctoritate quem-que patrem*: "And as regards the adulterer's rank, the father may kill," etc. Cp. below in this title, chap. 12, § 1, *Cuiusque dignitatis*; for the law, cp. *Digest* xlviii. 5, l. 24, *pr.*, and § 3; also *ibid.*, l. 38, § 9.

Line 13. *Nisi persecutus illam interfecerit*: Cp. below in this title, chap. 9; *plane si filia non uoluntate patris, sed casu seruata est*, etc. Also *Digest* xlviii. 5, l. 23., § 4; *ibid.*, l. 32, *pr.*

Line 15. *et titulo*. See note to page 72, line 27.

Line 18. *Secundum leges*. Huschke suggests *secundum legis (uerba)*, "according to the terms of the statute." Cp. *Zeitschr. für R.W.*, xiii., p. 34; and below in this title chap. 12, § 2, *uerbis quidem legis prope est*.

Lines 18-19. *Domi suae deprehensum*; but the husband has not the right of killing the adulterer if he finds him in the house of his father-in-law. *Digest* xlviii. 5, l. 24, *pr.*, *non etiam socii*.

Line 21. *cum bestiis pugnaret locauit*. Huschke thinks that here probably the following passage has dropped out: *quiue leno fuit, quiue artem ludicram ante fecit, inue scenam saltandi cantandiuue causa prodiit* (*Digest* xlviii. 5, l. 24, *pr.*).

The second chapter enacts that if a father, either at his own house or at that of his son-in-law who has applied to him in the matter, has caught anyone committing adultery with his daughter, she being at the time in his power or having passed, with his sanction, out of his power into that of her husband, he is permitted to slay the adulterer without risk of prosecution, provided that he slays the daughter immediately.

If a father kills a man taken in adultery with his daughter, who is *sui iuris*, and kills his daughter at the same time, Marcellus, in the Thirty-first Book of his "Digest," writes that the act is lawful.

Marcellus, in the same Book, shows that a father has also the sanction of the law to kill a man of consular rank or his own patron, should he take him in adultery with his daughter.

But if he does not kill the daughter but only the adulterer, he is guilty of murder.

And the law is the same if he kill the daughter after an interval, unless he pursue her and kill her; for where the father had a continuing intention, he is regarded as having acted with legal sanction.

The same Paulus, in the same Single Book and Title :

Certain classes of persons are enumerated whom the husband may kill when the wife is taken in adultery (with any of them), though he may not kill her.

Thus the husband, even if he is a *filius familias*, is permitted, according to the Statutes, to kill a man whom he has taken in adultery in his house, if the adulterer is a slave, a paid gladiator, or one who has let out his services to fight with wild beasts, or has been convicted on a criminal charge, or is a freedman, whether his own or his father's, and whether a Roman or a Latin citizen.

Moreover, he is permitted to kill the freedman of his father, mother, son or daughter; and this class also includes a freedman with the status of an enemy surrendered at discretion.

PAGE 74, line 22. *Libertinum*: Huschke has instead *libertum uxoris*. The meaning of the whole passage would be, "his wife's or his freedman, or the freedman of either his or her father."

Line 25. *Quo loco et dediticius habetur*. The *dediticius* was created by the *Lex Aelia Sentia*, passed in the year 4 C.E., and could not have been mentioned in the *Lex Julia*, the date of which is 18 B.C. But the *dediticius* was a *quasi-Romanus* or a *quasi-Latinus civis*. Hence the phrase *quo loco et dediticius habetur*. Huschke would place this passage at the end of § 3.

profiteri apud eum, cuius iurisdictio est eo loco, ubi occidit, et uxorem dimittere. quod si non fecerit, impune non interficit. IV. 3, 6 sciendum est autem diuum Marcum et Commodum rescripsisse eum qui adulterum inlicite interfecerit, leuiori poena puniri. sed et Magnus Antoninus pepercit, si qui adulteros inconsulto calore ducti interfecerunt. et reliqua. 5

IV. 4, 1 Idem Paulus eodem libro singulari et titulo :

Iure mariti uel patris qui accusat, potest et sine calumniae poena uinci: si iure extranei accusat, potest calumniae poena 2 puniri. sed tum post duos menses intra quattuor menses utiles expertus, licet talis sit, qui alias accusare non possit, ut libertinus aut minor uiginti quinque annorum aut infamis, tamen ad accusationem admittitur, ut et Papinianus libro XV. scripsit. 10

IV. 5, 1 Papinianus libro XV responsorum sub titulo ad legem Iuliam de adulteris : 15

Ciuis Romanus, qui [ciuem Romanam] sine conubio siue peregrinam in matrimonio habuit, iure quidem mariti eam adulteram non postulat, sed ei non opponetur infamia uel quod libertinus rem sestertiorum triginta milium aut filium non habuit, propriam iniuriam persequenti. 20

IV. 6, 1 Paulus libro singulari et titulo qui supra :

In uxorem adulterium uindicatur iure mariti, non etiam sponsam. Seuerus quoque et Antoninus ita rescripserunt.

Line 1. *Profiteri* : after this word Huschke supplies (*rem*). Cp. the phrase *testandae eius rei causa* (*Digest* xlviii. 5, l. 25, *pr.*). The passage below in this title, chap. 12, § 5, *atque.....profiteri*, is against him.

Line 3. *Marcum et Commodum rescripsisse*. Reference to *Digest* xlviii. 5, l. 38, § 8, shows that the Rescript refers to an adulteress, unless we read in that passage *uxoris in adulterio deprehensum*, instead of *uxorem in adulterio deprehensam*.

Line 5. *Magnus Antoninus, i.e., Caracalla*, to whom are to be ascribed the Rescript, Just. Code, ix. 9, 3, *Imp. Antoninus A. Juliano* (213) and probably *ibid.* 4, now attributed to Alexander—*Imp. Alexander A. Juliano*.

Line 9. *Si iure extranei accusat, i.e.*, if it is the father or husband who brings the charge, but not *iure mariti uel patris*,

Line 10. *Sed tum, post duos menses intra quattuor menses*. A charge of adultery may be brought by the father or husband, without risk of an action for malicious prosecution, within two months of the alleged act of adultery. Others cannot bring such a charge within this time (*Digest* xlviii. 5, l. 14, § 2.). After two months and within four months, all can bring such a charge, but only *iure extranei*. On failure to prove, they are liable to an action for malicious prosecution (*Digest, h.t. l. 14, § 3, and l. 30, pr.*). After four months, no charge of adultery could, it seems, be brought. Cp. also *Digest, h.t. l. 11, § 6, and Code 9, l. 6*.

Line 11. *Ut libertinus*. The freedman generally could not sue his patron, nor could he sue anyone else *extranei iure* on a charge of adultery. But if he is an aggrieved father or husband, he may even sue his patron on a charge of adultery, but only *extranei iure* (*Digest, h.t. l. 38, § 9*).

Line 12. *Minor uiginti quinque annorum*. Cp. *Digest, h.t. l. 15, § 6*

He is bound, however, to lay an information before the authority which has jurisdiction in the place where he has slain the adulterer, and must put away his wife. Unless he do so, the killing will not go unpunished.

But it should be noted that, according to a Rescript of the late Emperors Marcus and Commodus, the unlawful killing of an adulterer should be visited with a milder penalty. Antoninus the Great, too, pardoned those who, in the first outburst of passion, slew adulterers, etc.

The same Paulus, in the same Single Book and Title :

Anyone who brings a charge of adultery, in his paternal or marital capacity, is not liable for malicious prosecution, should he fail to prove. But if he lays such a charge, as an ordinary member of the public, and fails to prove, he is liable for malicious prosecution. In the latter case, too, the charge must be brought after two and within four months of the law-term ; even where the accusers are such persons as freedmen, minors under twenty-five years of age, or people branded with infamy, who in other cases may not bring accusations, and are nevertheless permitted to bring a charge of adultery, as Papinian has also written in the Fifteenth Book.

Papinian, in the Fifteenth Book of his Responses, under the Title "Of the Lex Julia Concerning Adulteries."

A Roman citizen who, without wedlock, cohabits with a Roman female citizen, or lives in matrimonial relations with a foreigner, cannot, in a marital capacity, charge her with adultery. But if he seeks legal redress for the wrong done him, he will not be repelled by the plea that he is a person branded with infamy, or is a freedman whose fortune is below thirty thousand sesterces, or has not a son.

Paulus, in the Single Book and under the Title above quoted :

An action can be brought in a marital capacity against a wife, but not against a betrothed. Severus and Antoninus have also issued a Rescript to this effect.

PAGE 76, line 12. *Infamis*, i.e., anyone who had been condemned on a charge involving character, e.g. theft, robbery, *iniuria*, or fraud ; a partner, *mandatarius*, *depositarius*, tutor, mortgagee (in *contractus fiduciæ* only), if condemned for wilful breach of duty (*Digest* iii., 2, l. 1) ; bawds, mimes (*Digest* xlviii., 5, l. 24, *pr.*).

Lines 12-13. *Tamen ad accusationem admittitur*. The ground is that a man, otherwise incapacitated from bringing a charge, may seek legal redress for a wrong done to him (*Digest* xlviii. 2, l. 11, *pr.*). Cp. also the last sentence of chap. 5, in this title *sed ei non opponetur infamia.....propriam iniuriam persequenti.....*

Line 18. *Sed ei non opponetur*, etc., i.e., he can sue *iure extranei*.

IV. 7, 1 Papinianus libro singulari de adulteris:

Quaerebatur, an pater emancipatam filiam iure patris accusare possit. respondi: occidendi quidem facultatem lex tribuit eam filiam, quam habet in potestatem, aut [quae] eo auctore in manum conuenit: sed accusare iure patris ne quidem emancipatam 5 filiam pater prohibetur.

IV. 8, 1 Papinianus eodem libro singulari (et titulo):

Cum patri lex regia dederit in filium uitae necisque potestatem, quo bonum fuit lege comprehendere, ut potestas fieret etiam filiam occidendi, uelis mihi rescribere: nam scire cupio. 10 respondit: numquid ex contrario praestat nobis argumentum haec adiectio, ut non uideatur lex non habenti dedisse, [sed occidi eam cum adultero iussisse], ut uideatur maiore aequitate ductus adulterum occidisse, cum nec filiae pepercerit?

IV. 9, 1 Idem:

15

Si pater quis adulterum occidit et filiae suae pepercit, quaero quid aduersus eum sit statuendum? respondit: sine dubio iste pater homicida est: igitur tenebitur lege Cornelia de sicariis. plane si filia non uoluntate patris, sed casu seruata est, non minimam habebit defensionem pater, quod forte fugit filia. nam 20 lex ita punit homicidam, si dolo malo homicidium factum fuerit, hic autem pater non ideo seruauit filiam, quia uoluit, sed quia occidere eam non potuit.

IV, 10, 1 Idem:

Si maritus uxorem suam in adulterio deprehensam occidit, 25 an in legem de sicariis incidat, quaero. respondit: nulla parte legis marito uxorem occidere conceditur: quare aperte contra legem fecisse eum non ambigitur. sed si de poena tractas, non inique aliquid eius honestissimo calori permittitur, ut non quasi homicida puniatur capite uel deportatione, sed usque ad 30 exilium poena eius statuatur.

Line 9. *Quo bonum* with Huschke; Mommsen reads *quod bonum*, which is awkward.

Lines 12-13. [*Sed occidi eam cum adultero iussisse*]; instead of this Huschke supplies (*occidendi potestatem, sed necessitatem imposuisse*).

Line 19. *Plane si filia non uoluntate patris.....quod forte fugit filia*. Cp. *Digest* xlviii., 5, l. 23, § 4.

Line 27. *Aperte*. Huschke would justify the reading in the Berlin MS. which he takes to be *ea parte* (and not *a parte*) as a reference to that part of the *Lex de Sicariis*, where lawful and unlawful homicide is discussed in contrast to that part of the *Lex* which deals with penalties.

Lines 30-31. *Sed usque ad exilium poena eius statuatur*. Cp. below in this title, chap. 12, § 4, *lenius puniri placuit*; also *Digest* xlviii. 8, l. 1, § 5; *ibid.*, xxix. 5, l. 3, § 3.

Papinian, in his Single Book "On Adulteries":

The question was asked, whether a father could, in his paternal capacity, bring a charge of adultery against his emancipated daughter. I answered: The law gives him, indeed, the right of killing the daughter whom he has in his power, or who, with his consent, has passed into marital control. But he is not forbidden to bring, in his paternal capacity, an action for adultery against his daughter, even if she is emancipated.

Papinian, in the same Single Book and Title:

As a law of the Regal period had already invested the father with power of life and death over his daughter, what was the purpose of expressly stating in the Statute that he also had the right of killing the daughter? Will you please reply, as I wish to know. He answered: Does not this addition, on the contrary, afford us a proof that the Statute is not to be regarded as conferring a new power (upon the father), but that it actually imposes upon him the duty of killing her, together with the adulterer, so that, in killing the adulterer, he is seen to have been influenced by motives of higher justice, since he has not even spared his daughter.

The same author:

If a father has slain the adulterer and spared his daughter, what, I ask, is his legal position? He answered: That father is undoubtedly a homicide and therefore liable under the "Lex Cornelia Concerning Assassins." Obviously, if the daughter escaped death, not by her father's wish, but by chance, as, for instance, if she fled, the father will have a good defence. For the law only punishes a manslayer, when he has caused death with evil intent. The father, however, did not in this case spare his daughter's life because he wished to do so, but because he was unable to kill her.

The same author:

If the husband kills his wife taken in adultery, does his case fall under the Statute concerning Assassins? He answered: Nowhere in that Statute, is the right granted to the husband to kill the wife. Hence, there is no doubt that the husband has manifestly committed a breach of the law. But if you are discussing the punishment, it is not unfair that allowance should be made for his righteous indignation, and he ought not to be punished as a murderer, with death or deportation, but his sentence should be limited to exile.

IV. 11, 1 Idem sic: De mancipiis alterutrius marito uel patre accusante quaestionem habendam palam est: an idem extraneo accusatori permitti debeat, quaero. respondit: potest uideri ea ratio fuisse permittendi istis personis de seruis quaestionem habere, ut diligentius dolorem animi sui, item iniuriam laesae domus non translatie persequerentur. sed quoniam non facile tale delictum sine ministerio seruorum admitti creditum est, ratio eo perduxit, ut etiam extraneo accusante mancipia quaestioni tormentorum subicerentur a iudicibus.

IV. 12, 1 Paulus libro sententiarum [secundo] sub titulo de adulteris: 10
 Permittitur [patri] tam adoptiuo quam naturali, adulterum cum filia cuiusque dignitatis domi suae uel generi sui deprehensum
 2 sua manu occidere. filius familias pater si filiam in adulterio deprehenderit, uerbis quidem legis prope est, ut non possit
 3 occidere: permittitur tamen etiam ei, ut occidat. maritus in 15
 adulterio deprehensos non alios quam infames et eos qui corpore quaestum faciunt, seruos etiam et libertos excepta uxore, quam
 4 prohibetur, occidere potest. maritum, qui uxorem deprehensam cum adultero occidit, quia hoc inpatientia iusti doloris admisit,
 5 lenius puniri placuit. occiso adultero dimittere statim maritus 20
 debet uxorem atque ita triduo proximo profiteri, cum quo adultero
 6 et in quo loco uxorem deprehenderit. inuenta in adulterio uxore maritus ita demum adulterum occidere potest, si eum domi suae
 7 deprehendat. eum, qui in adulterio deprehensam uxorem non
 8 statim dimiserit, reum lenocinii postulari placuit. serui uero 25
 tam mariti quam uxoris in causa adulteri torqueri possunt, nec his libertas sub specie impunitatis data ualebit.

c. 12, 1, 2, 3 = Paulus ii. 26, 1, 2, 4 (ex Codd. Vesontino et Vaticano).

c. 12, 4, 5 = Paulus ii. 26, 5, 6 (ex codd. Vesontino et Vaticano).

c. 12, 6, 7 = Paulus ii. 26, 7, 8.

c. 12, 8. Paulus ii. 26, 9 is restored from this passage.

Line 1. *De mancipiis alterutrius.* Cp. Digest xlviii. 5, l. 27, §§ 6 and 15.

Lines 4-5. *Ut diligentius dolorem animi sui, item iniuriam laesae domus.* The former clause refers to the wronged husband, the latter to the injured father. The object was to prevent the injured parties from precipitately taking the law into their own hands.

Lines 6-9. *Sed quoniam...a iudicibus.* From the trend of the argument, it might be presumed that the stranger here means a husband or father, unable to sue in either of those capacities on account of the lapse of more than two months from the commission of the alleged offence; but Digest xlviii. 18, l. 17, *pr.* is quite general in its terms.

Line 16. *Infames*, see note on page 76, line 12.

Lines 16-17. *Qui corpore quaestum faciunt.* According to Huschke, public performers, such as paid gladiators or those who hire themselves out to fight in the arena with wild beasts. Cp. in this title, chap. 3, § 2, *eum qui auctoramento rogatus est ad gladium*, etc. According to Forcellini, the phrase *qui corpore quaestum faciunt* is to be taken *sensu obsceno*. *Seruos etiam et libertos*, Huschke has *seruos etiam et libertos tam uxoris et suos quam parentum ac liberorum*.

Line 17. *Excepta uxore.* The *uxor libertina* is here referred to.

Line 20. *lenius puniri.* See page 78, lines 28-31.

Lines 21-22. *Proferi...deprehenderit.* So, more summarily, above in this title, chap. 3, § 5, *debet autem profiteri*, etc.

The same author thus :

“ It is common knowledge that when a father or husband brings a charge of adultery, slaves belonging to either of the accused parties may be put to the torture. But ought this to be allowed,” I ask, “ when the accuser is a stranger? He replied : We may well take it that the reason for allowing the first-mentioned to have slaves put to the torture was, that they might the more diligently and without remissness seek legal redress for their outraged feelings and the wrong done to the family honour. But since such an offence could not, it was believed, have been easily committed without the aid of the slaves, it logically followed that even where the accuser was a stranger, slaves might be put by the judges to the torture.

Paulus, in the Second Book of The Sentences, under the Title “ Of Adulteries ” :

An adoptive or a natural father is permitted to kill with his own hand the adulterer taken with his daughter in his house or in that of his son-in-law, whatever be the adulterer’s rank.

The strict terms of the law would imply that a father who is a *filius familias* has not the right to kill his daughter taken in adultery. Still he, too, is permitted to do so.

The husband has the right to kill the adulterer taken in the act only when he belongs to one of the following classes: Persons branded with infamy, public performers, slaves and freedmen. The wife is excepted by an express prohibition.

Where a husband kills his wife whom he has taken in adultery, the accepted rule is that he should be punished lightly, because he acted under the over-mastering influence of a just indignation.

When he has killed the adulterer, the husband must at once put away his wife and then lay an information within three days as to the person with whom, and the place where, she was taken in adultery.

Where the wife is taken in adultery, the husband may only kill the adulterer if he apprehends him in his own house.

It is accepted that a husband who does not at once put away his wife whom he took in adultery, may be charged with bawdry.

In trials for adultery, slaves of the husband or wife may be put to the torture ; enfranchisement granted them with the view of securing exemption will not avail.

PAGE 80, lines 24-25. *Eum ;.....placuit.* Cp. *Digest* xlviii. 5, l. 29, *pr.*

Line 26. *Mariti.* Cp. *Digest*, *h. t. l.* 27, § 14.

Lines 26-27. *Nec his libertas.....ualebit.* Cp. *Digest* xl. 9, ll. 12-14.

V. 1, 1 Moyses dicit :

Qui manserit cum masculo mansione muliebri, aspernamentum
est : ambo moriantur, rei sunt. 5

V. 2, 1 Paulus libro sententiarum II sub titulo de adulteris :

Qui masculum liberum inuitum stuprauerit, capite punietur.
2 qui uoluntate sua stuprum flagitiumque inpurum patitur, dimidia
parte bonorum suorum multatur nec testamentum ei ex maiore
parte facere licet. 10

V. 3, 1 Hoc quidem iuris est : mentem tamen legis Moysis imperatoris
Theodosii constitutio ad plenum secuta cognoscitur. (item
Theodosianus) :

Imp. Valentinianus Theodosius et Arcadius Auggg. ad
Orientum uicarium urbis Romae. Non patimur urbem Romanam 15
uirtutum omnium matrem diutius effeminati in uiro pudoris con-
taminatione foedari et agreste illud a priscis conditoribus robur
fracta molliter plebe tenuatum conuicium saeculis uel conditorum
inrogare uel principum, Orienti k[arissime] ac iuc[undissime]
2 nobis. laudanda igitur experientia tua omnes, quibus flagiti usus 20
est uirile corpus muliebriter constitutum alieni sexus damnare
patientia nihilque discretum habere cum feminis, occupatos, ut
flagitii poscit inmanitas, atque omnibus eductos, pudet dicere,
uirorum lupanaribus spectante populo flammae uindicibus expiabit,
ut uniuersi intellegant sacrosanctum cunctis esse debere hospitium 25
uirilis animae nec sine summo supplicio alienum expetisse sexum
a. 390 qui suum turpiter perdidisset. Prop. pr. id. Maias Romae in
atrio Mineruae.

c. 2, 1 = Paulus ii. 26, 12 (ex codd. Vesontino et Vaticano).

c. 2, 2. Paulus ii. 26, 13 is restored from this passage.

c. 3, 2, 1. 20, omnes—l. 24 expiabit = cod. Theod. ix. 7, 6.

Lines 4-5. Lev. xx. 13: If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.

Note that the Collatio gives the text in a summarised form.

Lines 8-10. *Dimidia parte.....licet*. One half of the property of which he is possessed at the time of conviction is forfeited to the State and of whatever he possesses at the time of death the State takes a half. Severus was the author of this constitution. (Zosimus, 1, 8.)

Line 11. *Hoc quidem iuris est*, i.e., as interpreted by the jurists.

Lines 12-13. *Item Theodosianus*; this, according to the view of editors and critics, is an interpolation. Cp. Haenel, Theodosian Code, p. 846.

Line 20. *Experientia tua*: a title of honour. Cp. Th. C. xvi. 5, chap. 28, *de haeret. ideoque experientia tua*; *ibid.* viii. 5, '57, *ne experientiae tuae*, a title used as a synonym to *laudabilitas tua* in the same paragraph.

LEGUM COLLATIO

FIFTH TITLE.

"OF DEBAUCHERS."

Moses says:

If anyone hath intercourse with a male as with a woman, it is an abomination. Let them both die; they are guilty.

Paulus, in the Second Book of "The Sentences," under the Title "Of Adulteries."

He who debauches a free male against his will shall suffer capital punishment.

Whoever willingly suffers himself to be debauched, forfeits half his property, and is not permitted to make testamentary disposition of more than half of the remainder.

This indeed is the law. But a constitution of the Emperor Theodosius followed to the full the spirit of the Mosaic Law. (Likewise the Theodosian Code.)

The Emperors Valentinian, Theodosius and Arcadius to Orientius, Vicar of the City of Rome: We cannot, dear and well-beloved Orientius, permit the City of Rome, mother of all the virtues, to be defiled any longer by the pollution of Sodomite practices, and the sturdy manhood derived from our ancient founders to be enfeebled, and thus, with the nation enervated by debauchery, a reproach be cast upon the ages of the Founders and the present Imperial time. All, therefore, whose wicked practice it is to treat the male body as if it were that of a female and condemn it to the functions of the opposite sex, holding themselves in no wise different from women—these, as the monstrous character of their crime demands, shall, under the instruction of Your Excellency, be arrested and dragged forth from the male brothels—shame to mention them—and, in the sight of the people be purged of their crime in the avenging flames; and so all will learn that the tabernacle of the soul of man is to be regarded by every one as sacred and inviolate, and no one who has shamefully forfeited his own sex shall seek to play the part of the other sex without suffering the extreme penalty of the law. Issued the 14th of May in the Hall of Minerva.

PAGE 82, line 20. *Flagiti usus*; Huschke has *flagitiosus luxus*: whose wicked sensuality induces them, etc.

Line 22. *occupatos* = *manu militari captos*. Huschke omits the comma after *feminis*, and explains *occupatos* to mean "those who are engaged in sodomy" for profit

Lines 27-28. *prop minervae*. The date and place are given differently in Th. C.

DE INCESTIS NVPTIIS.

VI. 1, 1 Moyses dicit :

Quicumque concubuerit cum muliere uxore patris sui, pu-
2 denda patris sui detexit, mortem moriantur ambo: rei sunt. et 5
quicumque concubuerit cum nuru sua, mortem moriantur ambo:
rei sunt.

VI. 2, 1 Ulpianus libro regularum singulari sub titulo de nuptiis :

Inter parentes et liberos, cuiuscumque gradus sint, conubium
2 non est. inter cognatos autem ex transuerso gradu olim quidem 10
usque ad quartum gradum matrimonia contrahi non poterant:
nunc autem ex tertio gradu licet uxorem ducere, sed tantum
fratris filiam, non etiam sororis, nec amitam nec materteram,
3 quamuis eodem gradu sint. eam quae nouerca uel priuigna, uel
4 quae nurus uel socrus fuit, uxorem ducere non possumus. si 15
quis eam quam non licet uxorem duxerit, incestum matrimonium
contrahit: ideoque liberi in potestate eius non fiunt, sed quasi
uulgo concepti spurii sunt.

VI. 3, 1 Paulus libro sententiarum [secundo] sub titulo de nuptiis :

Inter parentes et liberos, matrimonia contrahi non possunt; 20
iure ciuili [nec sororem] nec filiam sororis aut neptem uxorem
2 ducere possumus: proneptem aetatis ratio prohibet. adoptiua
cognatio impedit nuptias inter parentes ac liberos omnimodo, inter
fratres (ac sorores) eatenus, quatenus capitis minutio non
3 interuenit. nec socrum nec nurum [nec] priuignam nec 25
nouercam aliquando citra poenam incesti uxorem ducere licet,
sicut nec amitam aut materteram. sed qui [affinem] uel
cognatam contra interdictum duxerit, remisso mulieri iuris errore
ipse poenam adulterii lege Iulia patitur, non etiam ducta.

c. 2 = *Ulpianus Reg.* v. 6, 7.

Lines 4-7. Lev. xx. 11, 12: And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them.

And if a man lie with his daughter-in-law, both of them shall surely be put to death: they have wrought confusion; their blood shall be upon them.

Note that the Collatio gives the Scriptural texts in summarised form.

Lines 20-21. *Non possunt; iure ciuili (nec sororem)*. I have adopted this order of words from Huschke. Mommsen has *iure ciuili* in line 20 after *liberos*. This cannot be correct, for marriage between ascendants and descendants are unlawful, *iure gentium*. See above in this title, chap. 2, § 1; also Gaius i. 59; *Digest* xxiii. 2, l. 53, and explicitly *ibid.* l. 68, *iure gentium incestum committit qui ex gradu ascendentium uel descendendum uxorem duxerit*. But a sister's daughter or a granddaughter is only prohibited *ciuili iure* (*Digest* xlviii. 5, l. 38, §§ 1 and 2). By Jewish Law marriage with a niece is permitted and even commended.

Line 24. (*ac sorores*), adopted from Gaius i. 61.

Line 27. (*affinem*), adopted from Huschke.

Lines 27-29. *sed qui.....ducta*. Cp. *Digest* xlviii. 5, l. 11, § 1, and l. 38, §§ 2, 4, 7.

“OF INCESTUOUS MARRIAGES.”

Moses says :

Whoever lieth with a woman, his father's wife, hath uncovered his father's nakedness. Both shall surely die ; they are guilty.

And whoever lieth with his daughter-in-law—both shall surely die ; they are guilty.

Ulpian, in his *Single Book of Rules*, under the Title “Of Marriages” :

There can be no lawful wedlock between ascendants and descendants, whatever the degree.

At one time, marriages could not take place between cognates laterally related up to the fourth degree. Now, however, a man is allowed to marry a relative of the third degree, but only a brother's daughter ; not, however, a sister's daughter, a father's sister, or a mother's sister, though these are also related to him in the same degree.

A man cannot marry a woman who has been his stepmother, stepdaughter, daughter-in-law, or mother-in-law.

Marriage with a woman whom it is unlawful to take to wife is incestuous, and the children accordingly do not come in the father's power, but are illegitimate, as though they had been conceived in promiscuous intercourse.

Paulus, in the *Second Book of “The Sentences,”* under the Title “Of Marriages” :

No marriages can be contracted between ascendants and descendants. Nor can we, according to the law of Rome, marry a sister, a sister's daughter or granddaughter. The consideration of age is a bar to marriage with her great-granddaughter.

Adoptive relationship is, under all circumstances, an impediment to marriages between ascendants and descendants ; but between brothers [and sisters] only so long as there has been no change of status.

Furthermore, marriage can never take place with a mother-in-law, daughter-in-law, stepdaughter, or stepmother, nor with a father's or mother's sister, without subjecting the parties to the penalties for incest. But if a man has, contrary to the prohibition, married one related to him by blood, he suffers the penalty for adultery under the *Lex Julia*, but not so the woman whom he married, since a woman is pardoned a mistake caused by ignorance of the law.

VI. 4, 1 Gregorianus. libro quinto sub titulo de nuptiis. Exemplum
litterarum Diocletiani et Maximiani imp. talem con-
iunctionem grauitur punire commemorat :

Exemplum edicti Diocletiani et Maximiani [Augg. et Con-
stantii et Maximiani] nobilissimorum Caesarum. Quoniam piis 5
religiosisque mentibus nostris ea, quae Romanis legibus caste
sanctaeque sunt constituta, uenerabilia maxime uidentur atque
aeterna religione seruanda, dissimulare ea, quae a quibusdam in
praeteritum nefarie incestaeque commissa sunt, non oportere
credimus: cum uel cohibenda sunt uel etiam uindicanda, 10
insurgere nos disciplina nostrorum temporum cohortatur. ita
enim et ipsos immortales deos Romano nomini, ut semper fuerunt,
fauentes atque placatos futuros esse non dubium est, si cunctos
sub imperio nostro agentes piam religiosamque et quietam et
2 castam in omnibus mere colere perspexerimus uitam. in quo id 15
etiam prouidendum quam maxime esse censuimus, ut matrimoniis
religiose atque legitime iuxta disciplinam iuris ueteris copulatis
tam eorum honestati, qui nuptiarum coniunctionem sectantur,
quam etiam his, qui inde deinceps nascentur, seruata religione
incipiat esse consultum et honestate nascendi etiam posteritas 20
ipsa purgata sit. id enim pietati nostrae maxime placuit, ut sancta
necessitudinum nomina optineant apud affectus suos piam ac
religiosam consanguinitati debitam caritatem. nefas enim credere
est [duratura] ea, quae in praeteritum a conpluribus constat
esse commissa, cum pecudum ac ferarum promiscuo ritu ad 25
illicita conubia instinctu execrandae libidinis sine ullo respectu
3 pudoris ac pietatis inruerint. sed quaecumque antehac uel
inperitia delinquentium uel pro ignorantia iuris barbaricae
inmanitatis ritu ex illicitis matrimoniis uidentur admissa, quam-
quam essent seuerissime uindicanda, tamen contemplatione 30
clementiae nostrae ad indulgentiam uolumus pertinere, ita tamen,
ut quicumque in ante actum tempus illicitis incestisque se
matrimoniis polluerunt, hactenus adeptos se esse nostram
indulgentiam sciant, ut post tam nefaria facinora uitam quidem

Line 22. *affectus* = near and dear relation, in this passage children. Cp. Th. C. xii. 1, 26: *denique ex perfectissimis honorariis uel affectus eorum*.

Line 24. *duratura*; I have supplied this word before *ea*, on Mommsen's suggestion. Huschke reads (*atenim*) *nefas eam creare est ea*, (*eam sc. caritatem*, Cp. *Beier ad Cic. De offic.* ii., p. 239): "it would be wrong that such tender feelings should be produced by the conditions that existed in the past."

Line 28. *inperitia*. Huschke cannot see any distinction between *inperitia* and *ignorantia iuris*; he, therefore, suggests instead of *inperitia*, *impuritia*; the meaning would be, whether these illicit unions were due to libidinousness or to ignorance of the Law.

The Gregorian Code, in the Fifth Book, under the Title "Of Marriages":

The text of a letter by the Emperors Diocletian and Maximian states that such a union should be visited with severe punishment.

Text of the Edict of the illustrious [and august] Emperors Diocletian and Maximian [Constantius and Maximian]: Since to our deep sense of religion the principles of pure morality established by Roman laws are deemed especially worthy of reverence and of scrupulous observance at all times, we regard it as our duty not to ignore the abominable acts of incest that have been committed in the past by certain persons. The spirit of our times calls upon us to take strong measures against all such practices as are to be checked or even punished. The immortal Gods, on their part, will undoubtedly continue to be, as they have always been, favourable and friendly to the Roman Power, only if all who live under our rule shall be observed by us to lead pious and religious lives, and to observe in all things quiet and absolute purity.

We have herein resolved that we must also as far as possible ensure two things in the case of marriages contracted under the auspices of religion and law according to our ancient legal system: (1) We must, by observing the requirements of religion, safeguard the good repute of those who seek the nuptial bond, and also of their issue; and (2) we must see that their descendants, by the purity of their birth, are also free from taint. For, in accord with our sense of piety, we made it a special point that the holy terms of relationship should command among the near relatives an affection which is due by our holy religion to kinship. It would indeed be wrong to anticipate a continuance of those acts which in the past had notoriously been committed by many persons who, impelled by their execrable lust, and without regard for decency and religion, rushed blindly into lawless unions after the promiscuous manner of cattle and wild beasts. But as regards all such unions as have hitherto been contracted after the monstrous fashion of barbarians, whether through inexperience or in ignorance of the law, our will is that, despite the severe punishment they merit, they should, of our clemency, have pardon extended to them. The grant of this indulgence, however, to all those who have defiled themselves in the past by lawless and incestuous connections, is to be regarded by the offenders as a boon, since after such abominable misdeeds

sibi gratulentur esse concessam, sciant tamen non legitimos se suscepisse liberos, quos tam nefaria coniunctione genuerunt. ita enim fiet, ut de futuro quoque nemo audeat infrenatis cupiditatibus oboedire, cum et sciant ita praecedentes admissores istius modi criminum uenia liberatos, ut liberorum quos illicite genuerunt successione arceantur, quae iuxta uetustatem Romanis legibus negabatur. 5

Et optassemus quidem nec ante quicquam eius modi esse commissum, quod esset aut clementia remittendum aut VI. 4, 4 legibus corrigendum. sed posthac religionem sanctitatemque in 10 conubiis copulandis uolumus ab unoquoque seruari, ut se ad disciplinam legesque Romanas meminerint pertinere et eas tantum 5 sciant nuptias licitas, quae sunt Romano iure permissae. cum quibus autem personis tam cognatorum quam ex adfinium numero contrahi non liceat matrimonium, hoc edicto nostro complexi 15 sumus: cum filia nepte pronepte itemque matre auia proauia et ex latere amita ac matertera [sorore] sororis filia et ex ea nepte. itemque ex adfinibus priuigna nouerca socru nuru ceterisque quae antiquo iure prohibentur, a quibus cunctos uolumus abstinere. 6 Nihil enim nisi sanctum ac uenerabile nostra iura custodiunt 20 et ita ad tantam magnitudinem Romana maiestas cunctorum numinum fauore peruenit, quoniam omnes leges suas religione sapientia 7 pudorisque obseruatione deuinxit. quare hoc edicto nostro uolumus omnibus palam fieri, quod praeteritorum uenia, quae per clementiam nostram contra disciplinam uidetur indulta, ad ea 25 tantum delicta pertineat, quae in diem III kal. Ian. Tusco et 8 Anullino cons. uidentur esse commissa. si qua autem contra Romani nominis decus sanctitatemque legum post supra dictum diem deprehenduntur admissa, digna seueritate plectentur. nec enim ullam in tam nefario scelere quisquam aestimet ueniam se 30 consequi posse, qui tam euidenti crimini et post edictum nostrum a. 295 non dubitabit inruere. Dat. kal. Mai. Damasco Tusco et Anullino cons.

c. 4, 5 = *Cod. Ius.* v. 4, 17, with a different beginning: Nemini liceat contrahere matrimonium cum filia — abstinere.

Line 31. *Tam euidenti crimini*: Huschke suggests *in iam euidentis crimen*.

Line 32. *Kal. Mai.* On the strength of the reading *Maías* in the Berlin MS., Huschke thinks that the number of days has fallen out before *Maías*.

their lives have been spared as an act of grace; they must know, however, that the children begotten of such wicked unions are not legitimate. The result will then be that in the future no one will dare to yield to his unbridled lusts, since they will be aware that those who before them had committed crimes of this character, though saved by the royal pardon from punishment, were nevertheless denied the right of being succeeded by their children whom they had begotten in illicit union, a right which, according to the ancient system, was denied them by the Roman laws. We could have wished that no such act had been committed, to need the exercise of our clemency or the correction of the law. And it is our will that henceforth, in contracting marriages, the requirements of religion and morality shall be observed by all, and all shall remember that they live under the Roman laws and institutions, and know that only such marriages are lawful as are sanctioned by the Roman law.

In this our Edict, we have enumerated the relatives, whether of the blood or by affinity, with whom marriage is prohibited, namely, a daughter, granddaughter, great-granddaughter, likewise a mother, grandmother, great-grandmother; and laterally, a father's sister, mother's sister [one's own sister], sister's daughter, or granddaughter. Among relatives by marriage, a mother-in-law, stepmother, stepdaughter, daughter-in-law, and relatives of other degrees with whom marriage is prohibited by ancient law; marriages within such degrees we forbid to all.

For our laws contain nothing but what is hallowed and worthy of reverence, and the Roman Empire has, under divine favour, attained its present greatness, only because it has safeguarded all its laws with the wise sanctions of religion and concern for morality.

Wherefore by this our Edict be it known to all that the pardon vouchsafed of Our grace for past offences, though seemingly against the spirit of our institutions, covers such offences only as appear to have been committed up to the 30th of December in the Consulship of Tuscus and Anullinus.

All offences against the honour of the Roman name and sanctity of the laws, found to have been committed after the above-named date, will be punished with condign severity. And if any person, after the publication of our Edict, shall not hesitate to rush into the commission of what is so clearly criminal, let him not count upon obtaining pardon for his heinous offence. Issued May 1st at Damascus in the Consulship of Tuscus and Anullinus.

VI. 5, 1 Hermogenianus sub titulo de nuptis :

Imp. Diocletianus et Maximianus Augg. Fl. Flauiano.
His qui incestas nuptias per errorem contrahunt, ne poenis
subiciantur, ita demum clementia principum subuenit, si postea
quam errorem suum rescierint, ilico nefarias nuptias diremerint. 5

a. 291 Prop. id. Mart. [Tiberiano] et Dione cons.

VI. 6, 1 Hanc quoque constitutionem Gregorianus titulo de nuptiis
inseruit, quae est tricesima et secunda, aliis tamen et die
[et cons.], id est : constitutio prop. V id. Iun. Diocletiano

a. 287 ter et Maximiano Augustis.

10

Papinianus libro singulari de adulteris :

Qui sororis filiam uxorem duxerat per errorem, antequam
praeueniretur a delatore, diremit coitum : quaero an adhuc possit
accusari ? respondit : ei qui coitu sororis filiae bona fide abstinuit,
poenam remitti palam est, quia qui errore cognito diremit coitum, 15
creditur eius uoluntatis fuisse, ut, si scisset se in eo necessitudinis
gradu positum, non fuisset tale matrimonium copulaturus.

VI. 7, 1 Idem dicitur in eos, qui incestas nuptias contraxerunt.
maledicti tamen sunt omnes incesti per legem, cum adhuc
rudibus populis ex diuino nutu condita isdem 20
adstipulantibus sanciretur. et utique omnes maledicti
puniti sunt, quos diuina et humana sententia consona uoce
damnauit. lex diuina sic dicit :

Maledictus, inquit, dixit Moyses, qui concubuerit cum uxore
2 patris sui : et dicit omnis populus : fiat, fiat. maledictus, qui 25

Lines 2-6. *Imp. Cons.* : Haenel gives this Constitution in his edition of the Gregorian Code only, p. 30. Cp., for the law, *Digest* xlviii. 5, l. 38, § 7.

Lines 7-10. *Hanc. Augustis* : this paragraph is regarded by all critics, except Dirksen, as an interpolation.

Lines 12-17. *Qui. copulaturus.* Cp. *Digest* xlviii. 5, l. 38, §§ 5 and 6.

Line 14. *coitu* : Huschke adopts the reading of the MSS., *coniunctae*. But the text can stand, as *diremit coitum* occurs in the line below.

Line 18. *Idem*. The same condemnation is pronounced on incestuous unions in the Mosaic as in the Roman Laws.

Line 19. *Omnes incesti, i. e.*, not only the two cases of incest referred to in the Scriptural text at the head of the title, but all those that follow.

Line 22. *Puniti sunt*. The offences were not left to the condemnation of heaven, but were punished by human tribunals.

Line 24, till p. 92, l. 11. *Maledictus. fiat*, Deut. xxvii. 20, 22, 23 : "Cursed be he that lieth with his father's wife ; because he uncovereth his father's skirt. And all the people shall say, Amen.

Cursed be he that lieth with his sister, the daughter of his father, or the daughter of his mother. And all the people shall say, Amen.

Cursed be he that lieth with his mother-in-law. And all the people shall say, Amen.

Lev. xviii. 12 : Thou shalt not uncover the nakedness of thy father's sister : she is thy father's near kinswoman.

Ibid. xviii. 13. Thou shalt not uncover the nakedness of thy mother's sister : she is

The Hermogenian Code, under the title "Of Marriages."

The Emperors Diocletian and Maximian to Flavius Flavianus: The clemency of the Emperors gives relief from penalties for incestuous marriages contracted in error, only if the parties, immediately upon discovery of the error, have broken off their unlawful union. Issued 15th of March, in the Consulship of [Tiberianus] and Dio.

This constitution has likewise been inserted in the Gregorian Code, under the title "Of Marriages," which is the thirty-second title, but with another date and names of other consuls:—namely, Constitution issued 9th of June, in the Consulship of the Emperors Diocletian (third year) and Maximian.

Papinian, in his Single Book "Of Adulteries":

If a man married his sister's daughter in error, and put an end to the union before he had been denounced by the informer, can a charge, I ask, be still brought against him. He answered: Where a man separates in good faith from his sister's daughter, the penalty is obviously remitted; because if one, on discovery of his error breaks off the union, it is presumed that had he known that he stood within the [forbidden] degree of relationship, he would not have contracted such a marriage.

The same is said against those who have entered into incestuous marriages. All guilty of incest were moreover cursed by the Law, when it was promulgated by Divine Authority to a people as yet uncultivated, and was then confirmed by a covenant into which they entered. And certainly all those upon whom a curse was pronounced, and whom Divine and human judgment with one voice condemned, received punishment. Thus saith the Divine Law:

Cursed, saith (God), Moses declared, be he who lieth with his father's wife; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his sister, either on his father's or mother's side; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his daughter-in-law; and all the people saith, "So be it, so be it."

concubuerit cum sorore sua de patre aut de matre: et dicit omnis
 3 populus: fiat, fiat. maledictus, qui concubuerit cum nuru sua: et
 4 dicit omnis populus: fiat, fiat. Maledictus, qui concuberit cum
 5 socru sua: et dicit omnis populus: fiat, fiat. maledictus, qui
 concubuerit cum sorore patris sui: et dicit omnis populus: fiat, 5
 6 fiat. maledictus, qui concubuerit cum sorore matris suae: et
 7 dicit omnis populus: fiat, fiat. maledictus, qui concubuerit cum
 8 sorore uxoris suae: et dicit omnis populus, fiat, fiat. maledictus,
 qui dormierit cum uxore fratris sui: et dicit omnis populus: fiat,
 9 fiat. maledictus, qui dormierit cum omni pecore: et dicit omnis 10
 populus: fiat, fiat.

(TITVLVS VII.)

DE FVRIBVS ET DE POENA EORVM.

VII. 1, 1 Quod si duodecim tabularum nocturnum furem [quoquo modo,
 diurnum] autem si se audeat telo defendere, interfici iubent, 15
 scitote, iuris consulti, quia Moyses prius hoc statuit, sicut
 lectio manifestat. Moyses dicit:

Si perfodiens nocte parietem inuentus fuerit fur et percusserit
 eum alius et mortuus fuerit hic, non est homicida is qui per-
 2 cusserit eum. si autem sol ortus fuerit super eum, reus est mortis 20
 percussor: et ipse morietur.

VII. 2, 1 Paulus libro sententiarum V ad legem Corneliam de sicaris et
 ueneficis:

Si quis furem nocturnum uel diurnum cum se telo defenderet
 occiderit, hac quidem lege non tenetur, sed melius fecerit, qui 25
 eum comprehensum transmittendum ad praesidem magistratibus
 optulerit.

VII. 3, 1 Ulpianus libro XVIII ad edictum sub titulo si quadrupes
 pauperiem dederit:

Iniuria occisum esse merito adicitur: non enim sufficit 30

c. 3, 1 *till* factum = *Dig.* ix. 2, 3.

thy mother's near kinswoman. *Ibid.* xviii. 18: Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her lifetime. (Note the last clause. According to Jewish Law marriage with a *deceased* wife's sister was never forbidden). *Ibid.* xviii. 16: Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness.

Deut. xxviii. 21: Cursed be he that lieth with any manner of beast. And all the people shall say, Amen.

Note that the incests forbidden in the text at the beginning of this title are put under a ban in the texts quoted here (Deut. xxvii. 20 and xxvii. 23, according to the Septuagint *κατὰ νόμον αὐτοῦ*). The author has altered the texts in Leviticus and framed them after the fashion of those he quotes from Deuteronomy, to indicate that the same penalties, Divine and human, apply to all incests.

LEGUM COLLATIO.

Cursed be he who lieth with his mother-in-law; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his father's sister; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his mother's sister; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his wife's sister; and all the people saith, "So be it, so be it."

Cursed be he who sleepeth with his brother's wife; and all the people saith, "So be it, so be it."

Cursed be he who sleepeth with any beast; and all the people saith, "So be it, so be it."

TITLE VII.

OF THIEVES AND THEIR PUNISHMENT.

With regard to the ordinance of the Twelve Tables that a thief, coming at night, be in any case killed, but if he come by day, only if he venture to defend himself with a weapon, know, ye jurists, that Moses had previously so ordained, as a perusal (of his Law) will show. Moses says:

If a thief be found breaking through the wall by night and one strike him and he die, the one who struck him is not a murderer.

But if the sun has risen on him, the smiter is guilty of his death and shall himself die.

Paulus, in the Fifth Book of The Sentences, on "The *Lex Cornelia* concerning Assassins and Poisoners":

If one kill a thief who comes at night or comes by day and defends himself with a weapon, he is not liable under this law; but he would have done better, had he apprehended and delivered him to the Magistrates, to be sent to the Provincial President for trial.

Ulpian, in the Eighteenth Book of his Commentary on the Edict, under the title "If a four-footed animal has caused damage to property":

The term "wrongfully" in the phrase "killed wrongfully"

PAGE 92, lines 18-21. Exod. xxii. 2-3: If a thief be found breaking in, and be smitten that he die, there shall no blood be shed for him. If the sun be risen upon him, there shall be blood shed for him.

Line 28. *Libro xviii.*; as correctly given in the *Digest*: the MSS. have *libro viii.*

Lines 28-29. *Si quadrupes pauperiem dederit.* Ulpian wrote in his 18th book on the edict under the title; *Si quadrupes pauperiem dederit* (Cp. *Digest* ix. 1, l. 1. But what follows here in the Collatio is what he wrote on the edict concerning the *Lex Aquilia* Cp. *Digest* ix. 2, l. 3; *ibid.*, l. 5, *pr.* and § 1).

occisum, sed oportet iniuria id esse factum. proinde si quis
 seruum latronem occiderit, lege Aquilia non tenetur, quia [iniuria]
 2 non occidit. sed et quemcumque alium ferro se petentem qui
 occiderit, non uidebitur iniuria occidissee. proinde si furem
 nocturnum, quem lex duodecim tabularum omnimodo permittit 5
 occidere, aut diurnum, quem aequae lex permittit, sed ita demum,
 si se telo defendat, uideamus, an lege Aquilia teneatur. et
 3 Pomponius dubitat, num haec lex non sit in usu. et si quis noctu
 furem occiderit, non dubitamus, quin lege Aquilia [non] teneatur:
 sin autem, cum posset adprehendere, maluit occidere, magis est, 10
 ut iniuria fecisse uideatur: ergo etiam lege Cornelia tenebitur.
 4 iniuriam autem accipere hic nos oportet non, quemadmodum et
 circa iniuriarum actionem, contumeliam quandam, sed quod non
 iure factum est, hoc est contra ius, id est si culpa quis occiderit.
 et reliqua. 15

VII. 4, 1 Ulpianus libro octauo de officio proconsulis sub titulo
 de furiis:

Fures ad forum remittendi sunt diurni, nocturnique extra
 ordinem audiendi et causa cognita puniendi, dummodo in poena
 eorum sciamus operis publici temporari modum non egrediendum. 20
 2 idem et in balneariis furiis. sed si se telo fures defendunt uel
 effractores uel ceteri his similes nec quemquam percusserunt,
 metalli poena humiliores, honestiores uero relegatione adficiendi
 erunt.

VII. 5, 1 Paulus libro sententiarum II sub titulo de furiis: 25
 1, 2 Furti quocumque genere damnatus famosus efficitur. fur

c. 3, 2 *till* occidissee = *Dig.* ix. 2, 5 *pr.*

c. 3, 3 = *Dig.* ix. 2, 5 *pr.*

c. 3, 4 = *Dig.* ix. 2, 5, 1.

c. 4 = *Dig.* xlvii. 17, 1 *abridged.*

c. 5, 1 = *Paulus* ii. 31, 15.

c. 5, 2-6 = *Paulus* ii. 31, 1-5.

Line 8. *Noctu*; Hushke prefers the reading in the *Digest*, *metu* (*mortis*), which he
 thinks was the reading originally intended in the Berlin Codex.

Line 11. *Ergo etiam lege Cornelia tenebitur*. If the slayer of the thief could
 have arrested him, he would be liable, under the *Lex Aquilia*, to the master if the thief
 was a slave, and also under the *Lex Cornelia* for homicide.

Line 18. *Fures ad forum*. The ordinary tribunal for the trial of civil cases. Cp. *ad*
forum remittendus est in title xi., chap. 4, and *ibid.*, chap. 6, § 2. Such cases are only
 heard when the *forum* is sitting and dealing with civil matters. Hence the term, *forenses*
actiones (*Digest* xlvii. 9, l. 1, § 1).

Line 26. *Furti.....efficitur*. Hushke suggests that this sentence properly belongs to
 the end of this chapter, and should similarly be added after *Paulus* ii. 31, 1-5.

Line 26. *Furti.....efficitur*. Cp. *Digest* iii. 2, l. 6, *pr.*

is rightly added, for it is not enough that a death has been caused, but it is necessary (to constitute the offence) that it should have been caused wrongfully. Thus, one who has killed a slave who is a highway robber, is not liable under the *Lex Aquilia*, because he has not killed wrongfully.

So too, the killing of a person who makes an armed attack, will not be deemed wrongful. If, then, a thief coming by night has been killed, as is allowed by the Law of the Twelve Tables in all circumstances, or one coming by day, as is equally allowed by the Law, but only when he offers armed resistance, is the slayer liable under the *Lex Aquilia*? Pomponius is uncertain whether this law does not apply.

In the case of a thief killed at night, we have no doubt that the killer is not liable under the *Lex Aquilia*. But if he choose to kill the thief when he might have arrested him, the better opinion is that it should be regarded as a wrongful act. He will therefore also be liable under the *Lex Cornelia*.

The term "wrongfully" [*iniuria*] here, is not to be taken in the sense of insult, as in the phrase *Iniuriarum Actio* "Action for outrage," but as meaning that which is done unlawfully, that is, against the law; namely, where death has been occasioned through someone else's fault, etc.

Ulpian, in the Eighth Book of the Proconsular Functions, under the title "Of Thieves":

Thieves who have stolen by day are to be sent for trial to the civil tribunal; those who steal at night are tried and punished on conviction, under the Praetor's extraordinary jurisdiction; yet, in punishing them, it must be borne in mind that we must not inflict on them a heavier penalty than a definite term in the public works. The same applies to those who steal at the baths. But thieves who offer armed resistance, break into houses, or are guilty of similar aggravated thefts, even though they have not assaulted anyone, are, if they belong to the lower orders, to be sentenced to the mines; if to the better classes, to deportation.

Paulus, in the Second Book of The Sentences, under the title "Concerning Thieves":

Anyone convicted of any kind of theft, becomes infamous.

A thief is one who handles property belonging to another [with fraudulent intent].

VII. 5, 3 est qui rem alienam contrectat. furtorum genera sunt quattuor, manifesti, nec manifesti; concepti et oblati. manifestus fur est, qui in faciendo deprehensus est, et qui intra terminos eius loci, unde furatus est, comprehensus est, uel antequam ad eum locum, quo destinauerat, peruenerit. nec manifestus est fur, qui in rapiendo quidem comprehensus non est, sed eum fecisse negari non potest. concepti actione tenetur, apud quem furtum est inuentum. oblati actione is tenetur, qui rem furtiuam ali optulit, ne apud se inueniretur. furti actione is agere potest, cuius interest rem non perisse. conceptiua autem agere potest, qui rem concepit et inuenit. oblati agere potest, penes quem res concepta inuenta est.

(TITVLVS VIII.)

DE FALSO TESTIMONIO.

- VIII. 1, 1 Moyses dicit : 15
 Si steterit testis iniustus aduersus hominem accusandum
 2 accusans eum impietatis, stabunt duo homines, quibus est inuicem
 contentio, ante deum et ante sacerdotes et ante iudices, quicumque
 3 fuerint in illis diebus. cum inquisierint iudices diligenter et
 4 inuentus fuerit testis iniustus testificans iniusta, insurgentes
 aduersus eum facietis ei, sicut uoluit malefacere et delebitis 20
 5 malum de medio uestrum : et ceteri audientes timebunt nec
 audebunt haec mala facere inter uos.
 2, 1 Paulus libro singulari de poenis omnium legum sub titulo ad
 legem Iuliam de adulteris : 25
 Qui falsum testimonium dixerit, proinde tenebitur, ac si
 lege Cornelia testamentaria damnatus esset.

Lines 4-5. *Ad eum locum quo.* Huschke supplies *eo die* after these words, before *destinauerat*. Cp. *Digest* xlvii. 2, l. 4. See Gaius iii. 184, where this point is mooted by the jurists.

Line 11. *Et inuenit;* Huschke suggests [*(id) est inuenit*] and regards the whole passage as a gloss. But *concepit* may already, in Paulus' time, have been an archaic term, needing the explanation *et inuenit*.

Line 12. *inuenta est.* The above remark applies to [*(id est) inuenta*], suggested by Pithou and adopted by Huschke.

Lines 16-23. Deut. xix. 16-20: If a false witness rise up against any to testify against him that which is wrong; then both the men, between whom the controversy is, shall stand before the Lord, before the priests and the judges, which shall be in those days; and the judges shall make diligent inquisition: and, behold, if the witness be a false witness, and hath testified falsely against his brother; then shall ye do unto him, as he had thought to have done unto his brother: so shalt thou put the evil away from you. And those which remain shall hear, and fear, and shall henceforth commit no more any such evil among you.

Uoluit malefacere better represents the original Hebrew and the Septuagint than does the Authorised Version. 𐤅𐤏𐤋𐤕 like *ἐνομιμενός*, means "thought evilly, plotted." It is interesting to note that the Jewish Law, according to the interpretation of the Pharisees, laid stress on *uoluit*, and only punished the witnesses if the falsehood of their testimony had

There are four kinds of theft: manifest, not manifest, receiving stolen goods, and passing them on. A manifest thief is one caught in the act, or apprehended within the bounds of the place wherein he had stolen it, or before his arrival at the place where he had intended to deposit it. A thief guilty of a non-manifest theft is one who was not arrested in the act of stealing, but whose commission of the theft cannot be denied. A man is liable for receiving stolen goods, on whose premises the stolen article has been found. A man is liable for passing stolen property, when he has passed it on to another person, to prevent its being found on his own premises.

Anyone to whose interest it is that a thing shall not cease to exist can sue for it in an action for theft.

The one who seized, [and] found the stolen article is the proper person to sue in an action for receiving. The one on whose premises it was seized [that is, with whom it was found], is the proper person to sue the thief for passing it on to him.

TITLE VIII.

"OF FALSE TESTIMONY."

Moses says:

If a false witness rise up against a man to accuse him of impiety, the two men between whom there is a controversy shall stand before God and before the priests and before the judges who shall be in those days.

When the judges shall have made diligent inquiry and the witness shall have been found unjust, testifying unjust things, ye shall rise against him, and do unto him according to the evil he wished to do, and ye shall blot out evil from your midst.

And the rest of the people shall hear and fear and not dare to do these evil things among you.

Paulus, in his single book concerning penalties imposed by all laws, under the title "On the *Lex Julia* concerning Adulteries":

Whoever has given false testimony will be liable in the same way as if he had been convicted under the *Lex Cornelia Testamentaria*.

been discovered before sentence on the accused had been carried out. This was in accordance with public policy. If, after a miscarriage of justice had taken place, the false witnesses had been executed on the denunciation of other witnesses, there was no guarantee that the second set of witnesses might not in their turn have their testimony impeached.

PAGE 96, lines 26-27. *qui.....esset*, i.e., he suffers deportation. Cp. Paulus iv. 7, § 1; see also *Digest* xlviii. 10, l. 33, for interdiction from fire and water, as the penalty for fraudulently quoting a non-existent Constitution.

VIII. 3, 1 Paulus libro sententiarum quinto sub titulo de testibus et de quaestionibus:

Hi, qui falso uel uarie testimonia dixerunt uel utrique parti prodiderunt, aut in exilium aguntur aut in insulam relegantur aut curia submouentur.

VIII. 4, 1 Idem libro [sententiarum quinto sub titulo] ad legem Corneliam de sicaris et ueneficis:

Lex Cornelia poenam deportationis infligit ei qui hominem occiderit eiusque rei causa furtiue faciendi cum telo fuerit, et qui uenenum hominis necandi causa habuerit uendiderit parauerit, falsumue testimonium dixerit quo quis periret, mortisue causam praestiterit. quae omnia facinora in honestiores poena capitis uindicari placuit: humiliores uero aut in crucem tolluntur aut bestiis subiciuntur.

VIII. 5, 1 Paulus libro sententiarum quinto sub titulo ad legem Corneliam testamentariam:

Qui ob falsum testimonium perhibendum [uel uerum non perhibendum] pecuniam acceperit dederit, iudicemue ut sententiam ferat uel non ferat corruerit corrumperemue curauerit, humiliores capite puniuntur, honestiores publicatis bonis cum ipso iudice in insulam deportantur.

VIII. 6, 1 Idem eodem libro et titulo:

Falsum est quidquid in ueritate non est, sed pro uero adseueratur.

VIII. 7, 1 Ulpianus libro octauo [de officio proconsulis] sub titulo de poena legis Corneliae testamentariae:

Praeterea factum est senatusconsultum Statilio et Tauro consulibus, quo poena legis Corneliae inrogatur ei, qui quid aliud quam testamentum sciens [dolo malo falsum] signauerit signariue

c. 3 = *Paulus* v. 15, 5 and *Dig.* xxii., 5, 16.

c. 4 = *Paulus* v. 23. 1, and above in the *Collatio*, title i. chap. 2.

c. 5 = *Paulus* v. 25, 2.

c. 6. *Paulus* v. 25, 3 is restored from this passage.

c. 7, 1 poena *till* coierint = *Dig.* xlviii. 10, 9, § 3.

Lines 1-2. *De quaestionibus*, i.e. putting to the torture, to elicit evidence. *Paulus* v. 14, *de quaestionibus adhibendis* is followed by *de testibus* (v. 15). Here the two titles are quoted jointly.

Line 3. *Uel uarie*. Huschke, following Pithou, emends the MS. reading *aliqua* into *oblique*, i.e., falsehood by suggestion.

Line 17—p. 100, line 10. Cp. for chap. 5-7, *Digest* xlviii. 10, l. 1, *pr.* §§ 1, 2, *ibid.* ll. 20, 21.

Line 17. *Uel uerum non perhibendum* supplied from *Paulus*.

Paulus, in the Fifth Book of The Sentences, under the title
"Of Witnesses and Putting to the Question":

Those persons who have testified falsely, varied their evidence, or betrayed it to either side, are sentenced to exile or deportation to an island, or removal from their position as senators.

The same author, in the [Fifth] Book [of The Sentences], under the [title] "On the *Lex Cornelia* concerning Assassins and Poisoners":

The *Lex Cornelia* inflicts the punishment of deportation on one who has killed a man, gone about armed for that purpose or in order to commit a theft, sold or prepared poison to kill a man, given false evidence to compass another's death, or in any other way caused death.

All these crimes are now, according to settled practice, visited with capital punishment, if the perpetrators are members of the higher classes. If they belong to the lower orders, they are crucified or cast to the wild beasts.

Paulus, in the Fifth Book of The Sentences, under the title
"On the *Lex Cornelia Testamentaria*":

Whoever has taken or given money in order to procure false testimony or the withholding of true testimony, or has corrupted a judge or procured his corruption so as to induce him to give or withhold a verdict,—all these, if they belong to the lower classes, shall suffer capital punishment; if to the better classes, confiscation of their property and, together with the corrupt judge, deportation to an island.

The same jurist, in the same book and title: False is that which is not true and yet asserted to be true.

Ulpian, in the Eighth Book [of the Proconsular Functions] under the title "Of the Penalty for infringing the *Lex Cornelia Testamentaria*":

A *Senatusconsultum* was furthermore passed in the Consulship of Statilius and Taurus, by which the penalty prescribed in the *Lex Cornelia* is inflicted upon anyone who fraudulently signs, or procures to be signed, any document other than a will which he knows to be false, also upon those who

PAGE 98, line 27. *Statilio et Tauro*. Huschke accepts Pithou's emendation *Statilio Tauro et (Scribonio Libone)*. The consulship of Statilius Taurus and Scribonius Libo was in the year 16 C.E.

curauerit, item qui ad falsas testationes faciendas testamentauae
falsa inuicem dicenda aut consignanda dolo malo coierint,
VIII. 7, 2. Licinio V et Tauro consss. item qui ob instruendam aduocatio-
nem testimoniae pecuniam acceperit pactusue fuerit societa-
tem[ue] coierit aut aliquam de ea [re pac]tionem interposuerit, 5
item si quis coierit ad accusationem innocentium senatus consulto
3 quod Cotta et Messalla factum est coercetur. sed et si quis ob
denuntiandum uel non denuntiandum remittendumue testimonium
pecuniam acceperit, senatus consulto quod duobus Geminis consss.
factum est poena legis Corneliae adfcitur. et reliqua. 10

(TITVLVS VIII.)

DE FAMILIARIS TESTIMONIO NON ADMITTENDO.

IX. 1, 1 Item Moyses:
Falsum testimonium non dabis aduersus proximum tuum.
2, 1 Vlpianus libro VIII de officio proconsulis [sub titulo] ad 15
legem Iuliam de ui publica et priuata:
Eadem lege quibusdam testimonium omnino, quibusdam
interdicitur inuitis capite octogesimo septimo et capite octogesimo
2, 2 octauo. [capite octogesimo octauo] in haec uerba his hominibus:
'Hac lege in reum testimonium dicere ne liceto, qui se ab eo 20
parenteue eius libertoue cuius eorum libertiue libertaue liberauerit,

c. 2, 2. This chapter of the *Lex Julia* is quoted by *Callistratus*, *Dig.* xxii. 5, 3, with the following omissions: page 100, line 21, libertoue — libertaue, page 102, line 3, quique d. c. a. erit and page 102, lines 4-5. praeterquam . . . missus est erit.

Line 3. *Licinio V. et Tauro Cons.*; this is only found in the Berlin MS. Mommsen gives the date as 44 c.e., in the Consulship of *Vinicius* (2nd year), and of *Taurus*. Huschke thinks that the phrase, *Licinio V. et Tauro cons.*, belongs to the beginning of the chapter where originally it was written *Statilio Tauro et Scribonio Libone consulibus*. The copyist, accustomed to seeing consuls designated by single names only, wrote in the text *Statilio et Tauro*, interpreted *Scribonio* as *Scribe Ibonio*; noted it in the margin as a correction *L (=lege) Ibonio, u (=uel) Libone, et Tauro cons.* Another scribe turned this into *Licinio V. et Tauro Cons.*

Line 6. *Accusationem*, as corrected by Pithou. Cp. *Digest* xlvii. 13, l. 2, *qui in accusationem coierint*. Mommsen approves, but reads with the MSS. *occisionem*, which is very doubtful.

Line 7. *Cotta et Messalla*, 20 c.e. Cp. for this rule *Digest* xlvii. 13, l. 2.

Line 9. *Duobus Geminis cons.*, 29 c.e.

Lines 7-10. For this rule, cp. *Digest* xlvii. 13, l. 1 and 2, and *ibid.* xlviii. 10, l. 1 § 2.

Line 12. *De [Familiaris Testimonio non admittendo]*. The Berlin MS. has this superscription, beginning the next title with the word *Decimo*. The subject matter differs from that of the previous title. It is headed by a Scriptural text, and it is most probably an independent title. The arguments against this view are that it commences with the word *item*, and that the previous title has, in our MSS., no subscription.

Line 14. *Exod. xx. 16*: Thou shalt not bear false witness against thy neighbour.

have conspired to concoct false evidence, or declare, or sign false wills, on each other's behalf; in the Consulship of Licinus, the fifth year, and of Taurus.

Furthermore, whoever has taken money for legal advice or evidence, entered into a contract, partnership or any other compact for this purpose, or engaged in a conspiracy to accuse the innocent, will be punished under the *Senatusconsultum* issued in the Consulship of Cotta and Messalla.

Furthermore, if one has taken money to denounce or refrain from denouncing another, or withhold testimony, he will, in accordance with the *Senatusconsultum* passed in the Consulship of the two Gemini, suffer the penalty of the *Lex Cornelia*, etc.

NINTH TITLE.

"OF EXCLUDING THE TESTIMONY OF
RELATIVES."

Likewise Moses :

"Thou shalt not give false witness against thy neighbour."

Ulpian, in the Ninth Book of The Pro-consular Functions, under the Title "On the *Lex Julia de vi publica et priuata*":

In the eighty-seventh and eighty-eighth chapters of this law, it is laid down that, under this law, some classes are altogether inhibited from giving evidence; others, if they are unwilling to do so.

The eighty-eighth chapter refers to these persons in the following terms: Under this statute, the following persons may not give evidence against a party to a suit: One who shall have emancipated himself from the said party; from his ascendant; from the freedman of either of them, or from the freedman's freedman, or from the freedwoman [of any of the foregoing]; or who shall be under the age of puberty; or shall have [been convicted in criminal trial and] not been restored to his previous status, or

PAGE 100, line 15. *Libro viiii.*; Huschke gives xi. Is this a misprint for ix? Cujas, relying on *Digest* xxii. 5, l. 19, corrects viii.

Line 16. *De vi publica et priuata*. For definition, see Justinian's Institutes, iv. 15, 6, and Gaius iv. 155.

Line 19. *His hominibus*. According to Huschke, these words begin the quotation: "The following persons are, under this statute, not permitted to give evidence."

Line 20. *reum*; strictly "defendant," here "a party to a suit."

- quiue inpubes erit, quiue [iudicio publico damnatus est, qui]
 eorum in integrum restitutus non est, quiue in uinculis custodiaeque
 publica erit, quiue depugnandi causa auctoratus erit, quiue ad
 bestias depugnare se locauit locauerit, praeterquam qui iaculandi
 causa ad urbem missus est erit, palamue corpore quaestum faciet 5
 feceritue, quiue ob testimonium dicendum [uel non dicendum]
 pecuniam accepisse iudicatus erit. nec uo[lens] quis eorum hac
 IX. 2, 3 lege in reum testimonium dicit. capite octogesimo septimo his:
 'inuiti in reum testimonium ne dicunt qui sobrinus est ei reo
 propioreue cognatione coniunctus, quiue socer gener uiricus 10
 priuignusue eius erit.' et reliqua.
 IX. 3, 1 Paulus libro sententiarum [V] sub titulo de testibus et
 quaestionibus:

Suspectos testes et eos uel maxime, quos accusator de domo
 eduxit uel uitae humilitas infamauerit, interrogari non placuit: 15
 2 in testibus enim et uitae qualitas spectari debet et dignitas. in
 adfinem uel cognatum inuiti testes interrogari non possunt.
 3 aduersus se inuicem parentes et liberi itemque [patroni et] liberti
 nec uolentes ad testimonium admittendi sunt, quia rei uerae
 testimonium necessitudo personarum plerumque corrumpit. 20

(TITVLVS X.)

DE DEPOSITO.

X. 1, 1 Moyses dicit:

Si aliquis dabit proximo suo argentum aut uas seruare et
 furatum fuerit de domo hominis, si inuenitur qui furatus est, 25
 reddet duplum. quod si non fuerit inuentus fur, accedet is qui
 commendatum suscepit ante dominum et iurabit nihil se
 nequiter egisse de omni re commendata proximi sui et liberabitur.

c. 2, 3. *This chapter of the Lex Julia is quoted by Paulus, Dig. xxii., 5, 4.*

c. 3 = *Paulus v., 15, 1-3.*

Line 4. *Locauit, locauerit*, so in the MSS. Huschke prefers *locabit, locauerit*, on the analogy of *faciet, feceritue* (lines 5, 6). The analogy in favour of the reading in the text is *missus est erit* (line 5).

Line 4. *iaculandi, i.e.*, to exercise as a light-armed soldier.

Lines 12-13. *De testibus et quaestionibus*. The passage that follows is from the title *de testibus*. As this title (v. 15) is preceded by the title *de quaestionibus habendis* and succeeded by the title *de seruorum quaestionibus*, the Collatio gives the reference as *de testibus et quaestionibus*.

Line 14. *Suspectos*. After this word, Huschke supplies from Paulus *gratiae*.

Lines 24-28. Exod. xxii. 7, 8, 11: If a man shall deliver unto his neighbour money or stuff to keep, and it be stolen out of the man's house; if the thief be found, let him pay double.

shall serve as a convict in chains or in public custody; or shall have engaged himself as a gladiator; or shall have hired himself or shall do so, to fight with wild beasts, but not if, he shall have been or shall be sent to the city "to throw javelins"; or one who for profit shall act or shall have acted as a public performer; or anyone who shall have been found guilty of accepting money for giving [or withholding] evidence;—none of the above classes may, according to this statute, give evidence against a party to a suit, even if they are willing to do so.

In the eighty-seventh chapter [such persons are referred to] in these terms: "Let not the following give evidence against their will against a party to a suit: a cousin or nearer relative to the party; his father-in-law, son-in-law, stepfather, stepson," etc.

Paulus, in the [Fifth] Book of the Sentences, under the Title "Of Witnesses and Questions":

It is settled that witnesses suspected of partiality, especially those whom the accuser brings from his own home, or whose degraded life has made them infamous, are not examined; for, in regard to witnesses, we must look both to the character of their lives and to their rank.

Witnesses cannot be compelled to give evidence against a relative by marriage or blood.

Parents and children, patrons and their freedmen, are not to be admitted as witnesses against each other, even if they are willing, because the close relationship of the parties usually vitiates their evidence.

TENTH TITLE.

"OF DEPOSIT."

Moses says:

"If a man shall give to his neighbour silver or a vessel to keep, and it shall have been stolen from the man's house, if the thief is found, he shall pay double; if the thief shall not be found, then he who had undertaken the charge shall come nigh before the Lord, and shall swear that he has not acted iniquitously in respect of anything which his neighbour had entrusted to him, and he shall be set free."

PAGE 102 (*cont.*) If the thief be not found, then the master of the house shall be brought unto the judges, to see whether he hath put his hand unto his neighbour's goods.....

Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; and the owner of it shall accept thereof, and he shall not make it good. The text in the Collatio is a condensed summary of Ex. xxii. 7-11. The word כלים rendered in the A.V. "stuff," means utensils or, in later Hebrew, garments.

Line 24. *uas*; Huschke has *suos*.

X. 2, 1 Modestinus libro differentiarum secundo [sub titulo] de deposito et commodato :

Commodati iudicio conuentus et culpam praestare cogitur : qui uero depositi conuenitur, de dolo, non etiam de culpa condemnandus est. commodati enim contractu, quia utriusque contrahentis utilitas interuenit, utrumque praestatur : in depositi uero causa sola deponentis utilitas uertitur et ibi dolus tantum praestatur. sed in ceteris quoque partibus iuris ista regula custoditur : sic enim et in fiduciae iudicium et in actionem rei uxoriae dolus et culpa deducitur, quia utriusque contrahentis utilitas interuenit. in mandati uero iudicium dolus, non etiam culpa deducitur. quamuis singulariter denotare liceat in tutelae iudicium utrumque deduci, cum solius pupilli, non etiam tutoris utilitas in administratione uersetur. depositi damnatus infamis est : qui uero commodati damnatur, non fit infamis : alter enim propter dolum, alter propter culpam condemnatur. actione depositi conuentus cibariorum nomine apud eundem iudicem utiliter experitur : at is cui res commodata est inprobe cibariorum exactionem intendit. inpensas tamen necessarias iure persequitur, quas forte in aegrum uel alias laborantem impenderit. res deposita si subripiatur, dominus dumtaxat habet furti actionem, quamuis eius apud quem res deposita est intersit ob inpensas in rem factas rem retinere. is uero cui res commodata est furti experiri debet, si modo soluendo fuerit. actio commodati semper in simplum competit, depositi uero nonnumquam in duplum, scilicet si ruinae uel naufragii uel incendii aut tumultus causa res deponatur.

c. 2, 5. *to experitur* = *Dig.* xvi. 3, 23.

Line 2. *Et commodato*, with Cujas and Huschke. Mommsen retains *uel commendato* from the MSS., which may be explained as an interpretation of *Deposito*.

Lines 5-6. *Utriusque contrahentis utilitas*. The owner has his goods in safe custody, the borrower the advantage of their use. Cp. *Digest* xiii. 6, l. 5, § 2; *ibid.* l. 17, l. 23.

Line 17. *Depositum*. Huschke inserts *serui* after *depositum*, and accordingly reads in line 18 *seruus commodatus*, instead of *res commodata*. The counter-claim for cost of keep can, indeed, apply to other deposits than slaves. But *aegrum uel alias laborantem* (line 20) clearly refers to the slave.

Lines 20-23. *Res deposita.....retinere*. Cp. Gaius iii. 207: "As the depositary is not answerable for the safe keeping of the thing deposited, but only for fraud, and, if it is stolen, is not compellable to make restitution by action of deposit, he is not interested in its loss; and, therefore, the action of theft is only maintainable by the depositor."

Lines 23-24. *Is uero.....fuerit*. The borrower for use is responsible for the safe keeping of the article borrowed, and has to pay compensation if it is stolen. Hence he can bring an action of theft. Cp. *Digest* xlvii. 2, l. 14 *fin.* *nam his damus furti actionem si sint soluendo quoniam periculum rerum ad eos pertinet*.

Lines 25-27. *Depositum.....deponatur*. Cp. *Digest* xvi. 3, l. 1, § 1 and *ibid.* l. 18.

Modestinus, in the Second Book of "The Distinctions," [under the Title] "Of Deposit and Loan for Use":

Anyone sued in an action of loan for use is compelled to make good a loss, even if it arise from negligence. But in an action of deposit, the defendant is only to be condemned for fraud, but not for negligence. For, in a contract of loan for use, as both parties benefit, there is a liability to make good a loss arising from either cause. But in the case of deposit, the depositor has the sole advantage, and therefore only losses arising from fraud are made good. This rule is also observed in other parts of the Law. Thus, in an action for trust and in an action *rei uxoriae*, negligence as well as fraud is taken into account, because both parties to the contract benefit. In an action of agency, fraud alone and not negligence also, is taken into account, though we may note the anomaly that in an action of guardianship both negligence and fraud are taken into account, notwithstanding that guardianship is exclusively for the benefit of the ward and not for that of his guardian. A person condemned in an action of deposit is infamous; one condemned in an action of loan for use does not become infamous. For the former is condemned for fraud, the latter for negligence. Anyone sued in an action of deposit can counterclaim before the same judge for cost of keep. But the borrower for use cannot justly claim the cost for keep. He can, however, sue for necessary disbursements, which he has, for instance, laid out on [a slave] when ill or otherwise distressed.

If the thing deposited has been stolen, only the owner can bring an action for theft, though the depositary has an interest in the detention of the deposit for his outlays on it. But it is the borrower for use who must sue for theft, provided he is solvent. In an action of loan for use, the claim is always for the value of the article lent; but in one of deposit, twice the value is sometimes claimed, namely, if the article has been deposited in consequence of the collapse of a house, shipwreck, conflagration or riot.

Hermogenian, under the Title "Of Deposit," inserts in his Code the following Constitutions:

The same Emperors to Flavius Munatius. It is undoubtedly the law that one who has undertaken the care of a deposit has to make good any loss arising from his fraud, but not loss due to accident. As, according to your statement, certain of the things entrusted to you were destroyed by fire, and there was no fraudulent

X. 3, 1 Hermogenianus sub titulo depositi huiusmodi inserit constitutiones:

Idem Augg. [et] Caess. Fl. Munatio. Eum qui suscepit depositum dolum, non etiam casum praestare certi iuris est. cum itaque proponas ignis ui quaedam cremata de his quae tibi fuere commendata nec ullum dolum in subtrahendis rebus adhibitum, rector prouinciae nihil contra iuris rationem fieri patietur. et quoniam necti quereris moras adhibita uarietate, negotium inter uos ortum secundum iuris ordinem sua ratione decidetur.

a. 293 Subscripta VIII k. Iul. Serdica Augustis cons. 10

X. 4, 1 Idem Augg. et Caess. Fl. Aurelio Altenico Andronico. Eos penes quos uestem et argenti materiam deposuisse proponis apud rectorem prouinciae conuenit interrogari, qui eos, siue teneant siue dolo fecerint quominus possint restituere, secundum bonam fidem tibi satisfacere compellet. Subscripta VI. k. April. Sirmi 15

a. 294 Caess. cons.

X. 5, 1 Idem Augg. et Caess. Aurelio et Eustathio et Diosimo. Is, qui depositum suscepit, ultra dolum, si non aliud specialiter conuenit, praestare nihil necesse habet. cuius memor iuris rector prouinciae partium allegationibus auditis pro repertorum qualitate suam ordinabit sententiam. Subscripta XIII k. Nou. 20

a. 294? Appiaria.

X. 6, 1 Idem Augg. et Caess. Septimiae Quadratillae. Qui dolo malo depositum non restituit, suo nomine conuentus ad eius restitutionem cum infamiae periculo urgetur. Subscripta prid. idus 25

a. 294 Decembres Nicomedia, CC. cons.

X. 7, 1 Paulus libro secundo sententiarum sub titulo de deposito:

Deponere possumus apud alium id quod nostri iuris est uel
2 alieni. depositum est quasi diu positum. seruandum est, quod
3 [ad] breue tempus custodiendum datur. deponere uidetur, qui 30
in metu ruinae incendii naufragii apud alium custodiae causa

c. 6 = *Cod. Iust.* iv. 34, 10.

c. 7, 1-4. *Paulus* ii. 12. 1-4 is restored from this passage.

Line 3: *Augg. [et] Caess.* here, and also below, in the superscriptions to chaps. 4, 5 and 6, refer to Diocletian and Maximian. See Hermogenian Code, Title xiii., *de deposito* (Haenel's edition, p. 74), where the same superscriptions are given, and where in Title xii. the superscription is *Impp. Diocletianus et Maximianus*.

Lines 7-9. *Et quoniam.....decidetur.* Flavius Munatius apparently had a claim against a depositor. The depositor refused to satisfy this claim on the ground that he had a counter-claim for the articles he had deposited, some of which had got burnt. The subject of the counter-claim was quite foreign to that of the claim: hence the petitioner's plaint and the Emperor's answer.

Line 20. *Repertorum*, with Huschke. Mommsen retains *ereptorum*, as in the MSS.

abstraction of them, the Governor of the Province will not permit anything to be done contrary to the principles of the law. And since you complain that delays are being devised by the introduction of extraneous matters, the case that has arisen between you both shall be decided in the ordinary course of the law on its own merits. 23rd June, at Serdica, in the Consulship of the Emperors.

The same Emperors to Flavius Aurelius Altenicus Andronicus. Those with whom you say you have deposited a garment and a quantity of silver should be examined before the governor of the Province, who will compel them to meet your claim equitably, whether they still hold the deposit or have fraudulently put it out of their power to restore it. 27th March, at Sirmium. The Emperors.

The same Emperors to Aurelius, Eustathius and Diosimus. Unless there is a special covenant, the depositary is not under the necessity of making good losses beyond those arising out of fraud. The Governor of the Province will, when hearing the statements of the parties, bear this principle in mind, and frame his decision in accordance with the findings. 19th October, at Appiaria.

The same Emperors to Septimia Quadratilla. A depositary who fraudulently fails to restore an article, on being sued in an action of deposit, is forced to make restitution, and, at the same time, is liable to be declared infamous. 12th December, at Nicomedia. The Emperors.

Paulus, in the Second Book of The Sentences, under the Title "Of Deposit":

We can deposit with another an article that belongs to us or to a third party.

Depositum is equivalent to *diu positum* [placed for a long time.] A thing given to be taken care of for a brief period is said to be kept.

It is a deposit when a thing is placed in another's charge for safety's sake, owing to apprehension caused by the fall of a house, fire or shipwreck.

PAGE 106, line 22. *Appiaria*. *Caess. cons.* should be added both here and in the Hermogenian Code.

Lines 23-26. Hermogenian Code xiii. 4; Justinian's Code iv. 34, l. 10.

Line 28. *Uel alieni*. A thief who deposits property of another person with a third party can sue in an action of deposit. *Digest* v. 1, l. 64 *pr.*; *ibid.* xvi. 3, l. 1, § 39; l. 31 *fin.*

Line 29. *diu positum*. But compare for another explanation *Digest* xvi. 3, l. 1 *pr.*: *Depositum est quod custodiendum alieni datum est, dictum ex eo quod ponitur; praepositio enim de auget positum, ut ostendat totum fidei eius commissum quod ad custodiam rei pertinet.*

Line 31. *In metu ruinae incendii naufragii*. See above, chap. 2, § 7, for *miserabile depositum*.

X. 7, 4 deponit. deponere uidetur et is, qui suspectam habens uel minus idoneam custodiam domus uel uim latronum timens apud aliquem
5 rem custodiendam commendat. si sacculum uel argentum [signatum] deposuero et is penes quem depositum fuit me inuito
6 contrectauit, et depositi et furti actio mihi in eum conpetit. ob 5
7 res depositas dolus tantum praestari solet. in iudicio depositi ex
8 mora et fructus ueniunt et usurae rei depositae praestantur. si quis rem penes se depositam apud alium deposuerit, tam ipse directam quam is qui apud eum deposuit utilem actionem depositi
9 habere possunt. si pecuniam deposuero eaque uti tibi permisero, 10
10 si rem apud te depositam uendideris eamque redemeris, post perdidideris, semel admissio dolo perpetua depositi actione teneberis.
11 ex causa depositi lege duodecim tabularum in duplum actio datur, edicto praetoris in simplum. 15

X. 8, 1 Gregorianus libro IIII sub titulo de deposito:

Imp. Alexander A. Mestrio militi. Incursu latronum ornamenta deposita apud interfectum ab eis perierunt: detrimentum ad heredes eius qui depositum accepit, qui dolum tantum praestare debuit, non pertinet. quod si praetextu latrocinii commissi 20
res, quae in potestate heredis sunt, non restituuntur, tam depositi quam [ad] exhibendum actio, sed et in rem uindicatio conpetit.
Prop. VII kal. Iul. Maximo bis et Urbano cons.

a. 234

X. 9, 1

Paulus libro responsorum V sub titulo ex locato et conducto:

25

‘Imp. Antoninus Iulio Agrippino. Dominus horreorum

c. 7, 5 = *Paulus* ii. 12, 5; *Dig.* xvi. 3, 29 *pr.*

c. 7. 6-11. *Paulus* ii. 12, 6-11 is restored from this passage.

c. 8 = *Cod. Iust.* iv. 34, 1.

c. 9 = *Cod. Iust.* iv. 65, 1.

Lines 3-4. *Sacculum uel argentum (signatum)*. According to Dirksen's *Manuale*, *argentum signatum* means silver coins, money. But Mommsen well explains that *signatum* is equal to *obsignatum*; the phrase would mean: "A purse, or money in a sealed package."

Lines 5-6. *Ob res.....solet*. Cp. above, chap. 2, § 1.

Lines 6-7. *In iudicio.....praestantur*. Cp. *Digest* xvi. 3, l. 1, § 24; *ibid.* l. 25, § 1, and *ibid.* l. 29, § 1; Cp. Justinian's Code iv. 34, l. 2.

Lines 8-9. *Ipse directam*. Cp. *Digest* xvi. 3, l. 1, § 11.

Line 9. *Utilem actionem*. Cp. Justinian's Code iii. 42, l. 8.

Line 10. *Eaque uti*. With Blume, after comparison of *Digest* xii. 1, l. 4. *pr.*; *ibid.* l. 9, § 9 and l. 10. Mommsen has *eamque*.

Lines 10-11. *Si pecuniam.....tuo erit*. Cp. *Digest* xii. 1, l. 9, § 9.

Line 13. *Perpetua*. Huschke prefers *perpetuata* on the strength of the verbal form in *Digest* xlv. 1, l. 91, § 3 and xlvii. 1, l. 58, § 1.

It is also a deposit when a thing is entrusted to another to be taken care of, because the owner is suspicious or ill-assured of the safety of his house, or fears an attack of robbers.

If I have deposited a purse or silver [sealed up], and the depositary has laid hands on it against my wish, I will be able to sue him for deposit as well as for theft.

In an action of deposit, damages are given for fraud.

In an action of deposit, profit and interest on the value of the article deposited will, where there has been delay [in restitution], have to be paid.

If a person deposits the article entrusted to him with a third party, the first depositary will have a direct, the original depositor an indirect, action of deposit.

If I have deposited with you money which I have given you permission to use, it is regarded as a loan rather than as a deposit, and consequently its loss will be at your risk.

If you sold the thing deposited with you and then bought it back and subsequently lost it, you will, once having committed a fraud, be liable in an action of deposit that can always be brought.

In an action of deposit, the Law of the Twelve Tables allows a claim for twice the value of the article deposited; the Prætor's Edict, for the single value only.

Gregorian, in the Fourth Book, under the Title "Of Deposit."

The Emperor Alexander to Mestrius, a soldier. In an attack by robbers, a man was killed, and ornaments deposited with him were destroyed. The loss will not fall on the heirs of the one who accepted the deposit, since he was only liable to make good losses due to his fraud. But if, under the pretext that a robbery had taken place, articles which are in the heir's possession are not restored, the owners will be entitled to actions of deposit and for production, as well as to a *vindicatio* for the thing itself. Issued 25th June, in the Consulship of Maximus (the second year) and Urban.

Paulus, in the Fifth Book of the Responses, under the Title "Of Hiring and Letting."

The Emperor Antoninus to Julius Agrippinus. The owner of

PAGE 108, line 13. *Depositi actione*. Cp. *Digest* xvi. 3, l. 1, § 25.

Line 15. *In simplum*. Cp. Gaius iv. 47. Where the *depositum* was *miserabile*, the claim, even by the prætor's edict, was for double damages. See above, in this title, chap. 2, § 7 and *Digest* xvi. 3, l. 18.

Lines 16-23. The Gregorian Code (Haenel's edition), iv. 3. Whether the additions in Justinian's Code are due to Tribonian or have been left out of the Collatio is doubtful.

- periculum uis maioris uel effracturae latronum praestare non cogitur. his cessantibus si quid ex depositis rebus inlaesis extrinsecus horreis perit, damnum depositorum sarciri debet.
- a. 213 Prop. IIII non. Nou. Antonino IIII cons.' Paulus respondit: satis praepositam constitutionem declarare his, qui horrea locant, maiorem uim inputari non posse.

(TITVLVS XI.)

DE ABACTORIBVS.

- XI. 1, 1 Moyses dicit :

Si quis inuolauerit uitulum aut ouem et occiderit aut uendiderit, quinque uitulos restituet pro uitulo uno, quattuor 2 oues pro oue una. quod si non habet unde reddat, uenundetur pro furto.

- XI. 2, 1 Paulus libro sententiarum V sub titulo de abactoribus :

Atroces pecorum abactores plerumque ad gladium uel in metallum, nonnumquam autem in opus publicum dantur. atroces autem sunt, qui equos et greges ouium de stabulo uel de pascuis abigunt uel si id saepius aut ferro aut conducta manu faciunt.

- XI. 3, 1 Idem Paulus eodem libro et titulo :

Abactores sunt, qui unum equum uel duas equas totidemque boues, [oues] uel capras decem, porcos quinque abegerint. quidquid uero intra hunc numerum fuerit ablatum, in poena furti pro qualitate eius aut in duplum aut in triplum conuenitur aut fustibus caesus in opus publicum unius anni datur aut sub poena uinculorum domino restituetur.

c. 2. From this passage, Paulus v. 18, 2 is restored.
c. 3 = Paulus v. 18, 1.

Line 1. *Latronum*; after this word, Huschke supplies from Justinian's Code *conductorii*. The rescript cannot refer to the case of a depositary, for he is not liable for negligence, unless the passage means that the Emperor inferred from the uninjured condition of the premises that the depositary's plea of *force majeure* was fraudulent. Possibly the words *depositis* (line 2) and *depositorum* (line 3) should not be pressed, and the case be taken as one of *locatio*.

Lines 4-6. *Paulus respondit.....non posse*. This is of course not found in Justinian's Code iv. 65, l. 1.

Lines 10-13. Exod. xxii. 1 and conclusion of 3: If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep.....if he have nothing, then he shall be sold for his theft.

Line 15. *Ad gladium*: i.e., to fight in the arena with wild beasts, but armed with a sword. See, however, below in this title, chap. vii., § 3, that there was a doubt as to the precise degree of severity of this punishment.

Lines 15-16. *Atroces.....dantur*. Cp. *Digest* xlvii. 14, l. 1 *pr.* and § 3, *ibid.* l. 2.

storehouses is not bound to make good the loss arising from *force majeure*, or the breaking in of robbers. But where such circumstances are absent, and deposits have been destroyed without any injury to the exterior of the store-houses, the loss of the deposits must be made good. Issued 2nd November, in the fourth year of the Emperor Antoninus.

Paulus wrote in a Response that the foregoing Constitution makes it clear that those who let storehouses cannot be made responsible for *force majeure*.

TITLE XI.

"OF CATTLE-RAIDERS."

Moses says:

"If anyone steal a calf or sheep, and kills or sells it, he shall restore five calves for one calf, four sheep for one sheep. But if he have not the means to repay, he shall be sold for the theft."

Paulus, in the Fifth Book of the Sentences, under the title "Of Cattle-raiders":

Hardened cattle-raiders are generally given up to the sword, or sent to the mines; sometimes, however, they are sent to the public works. They are regarded as hardened when they take horses from the stable, flocks of sheep from the fold, or either from the pastures: whether they do this repeatedly, or (even on a single occasion) with arms or accompanied by a band of men.

The same Paulus, in the same book and title:

Cattle-raiders are those who have taken away one horse or two mares, the same respective numbers of large-horned cattle, ten sheep or she-goats, or five swine. If a smaller number has been taken, the raider is sued for theft for double or threefold damages according to the character of the theft, or is sentenced to a flogging, followed by a year's labour on the public works; or [if a slave] is restored to the master but has to wear chains.

PAGE 110, lines 20-21. *Totidemque boues*; i.e., one ox or two cows. Cp. *Digest* xlvii. 14, l. 3 *pr.*

Line 21. [*Oues*] as given in *Digest* xlvii. 14, l. 3, *pr.*

Line 23. *Triplum*; Huschke prefers *quadruplum*. A thief taken in the act had to pay fourfold; not taken in the act, twofold. Whether the offence for which the penalty was threefold could properly be called Theft was doubted. Cp. Justinian's Institutes iv. 1, 3; Gaius, iii. 183.

Line 24. *Aut sub poena*; Huschke supplies after *aut* (*seruus*). This co-relative may, however, be understood from *domino*.

XI. 4, 1 Idem Paulus eodem libro et titulo :

Si ea pecora, de quibus quis litigauerat, abegerit, ad forum remittendus est atque ita conuictus in duplum uel in triplum furis more damnatur.

XI. 5, 1 Idem Paulus eodem libro et titulo :

5

Qui bouem uel equum errantem quodue aliud pecus abduxerit, furem magis eum quam abactorem constitui placuit.

XI. 6, 1 Paulus libro singulari de poenis paganorum sub titulo de abigeis dixit :

Cum durius abigei damnantur, et ad gladium traduntur : 10

2 itaque diuus Pius ad concilium Baeticae rescripsit. qui pecora, de quibus litigabat, abegit, ad forum remittendus est et si uictus fuerit, in duplum uel quadruplum condemnandus.

XI. 7, 1 Ulpianus libro octauo de officio proconsulis sub titulo de abigeis :

15

De abigeis puniendis ita diuus Hadrianus rescripsit concilio Baeticae : 'Abigei cum durissime puniuntur, ad gladium damnari solent. puniuntur autem durissime non ubique, sed ubi frequentius est hoc genus maleficii : alioquin et in opus et 2 nonnumquam temporarium damnantur. ideoque puto apud uos 20 quoque sufficere genus poenae, quod maximum huic maleficio inrogari solet, ut ad gladium abigei dentur : aut si quis tam notus et tam grauis in abigendo fuit, ut prius ex hoc crimine aliqua 3 poena affectus sit, hunc in metallum dari oportere.' rescriptum 25 diui Hadriani sic loquitur, quasi grauior poena sit metalli : nisi 4 damnationem. est autem differentia inter eos qui ad gladium et eos qui ad ludum damnantur : nam ad gladium dam-
nati confestim consumuntur uel certe intra annum debent

c. 4 = *Paulus* v. 18, 3.

c. 5. *From this passage Paulus* v. 18, 4, *is restored.*

c. 7, 1 = *ig.* xlvii. 14. 1 *pr.*

Lines 2-3. *Ad forum remittendus.* Cp. above, title vii. 4, § 1.

Lines 2-4. See below, chap. 6, § 2. Note line 3, *triplum*, for which Huschke prefers *quadruplum* as below in line 13.

Lines 6-7. *Qui bouem.....placuit.* Cp. *Digest*, xlvii. 14, l. 1, § 1.

Line 10. *Ad gladium.* See above, chap. 2, 1, and the note as to explanation, and Cp. below chap. 7, 1-4.

Traduntur. With Schulting. Mommsen follows the MSS. and editors, and reads *tradantur*.

Lines 25-27. *Nisi forte.....damnationem.* Cp. Theodosian Code ix. 18, *Liber autem sub hac forma in ludum detur gladiatorium ut antequam aliquid faciat quo se defendere possit, gladio consumatur.*

Paulus, in the same book and title :

If a litigant raids flocks which are the subject of his suit, he is to be sent for trial to the Civil Court; and, if there found guilty, is condemned, as a thief, to pay twice or thrice the value.

The same Paulus, in the same book and title :

To drive off a stray ox, horse or other cattle is, according to settled rule, treated as theft rather than cattle-raiding.

Paulus, in his single book "Concerning the Punishments of Peasants," under the title "Of Cattle-raiders":

When cattle-raiders are punished severely, they are even delivered to the sword. And so the late Emperor Antoninus Pius wrote in a rescript to the Council of Baetica.

A litigant who raids cattle, the subject of a suit, is to be sent for trial to the Civil Court, and, if found guilty, is to be condemned to pay twice or four times the value.

Ulpian, in the Eighth Book of The Proconsular Functions, under the title "Of Cattle-raiders":

The late Emperor Hadrian, in a rescript to the Council of Baetica concerning the punishment of cattle-raiders, wrote as follows:

When cattle-raiders are punished very severely, they are usually sentenced to "the sword." They are not, however, punished with extreme severity in all districts, but only where this class of offences is rampant; otherwise, they are condemned to labour in the public works; and that, sometimes, only for a limited period.

I am, accordingly, of the opinion that the highest penalty inflicted for this offence should suffice in your jurisdiction, and that the raiders should be sentenced to the sword; or, if anyone has been so notorious and persistent in raiding as to have been previously punished for this offence, he should be sent to the mines.

The terms of the Emperor Hadrian's rescript would imply that labour in the mines is the severer punishment. Unless, possibly, the Emperor Hadrian meant by the phrase "punishment of the sword" the gladiatorial games. There is, however, a distinction between those sentenced to the sword and those sentenced to the games; the former are despatched without delay, or at any rate ought to be despatched within a year, and this instruction is contained in the Orders. But those condemned

consumi: hoc enim mandatis continetur. enimvero qui in ludum damnantur, non utique consumuntur sed etiam pilleari et rudem accipere possunt post interuallum, siquidem post quinquennium pilleari, post triennium autem rudem induere eis permittitur.

XI. 7, 5 eodem rescripto diui Hadriani diligentissime expressum est non 5
ubique parem esse poenam abigeorum.

XI. 8, 1 Idem Ulpianus libro et titulo qui supra :

Abigei autem proprie hi habentur, qui pecora ex pastu et ex armentis subtrahunt et quodammodo depraedantur et abigendi studium quasi artem exercent equos de gregibus uel boues de 10
armentis abducentes. ceterum si quis bouem aberrantem uel equum [relictum] in solitudine abduxerit, non est abigeus, sed
2 fur potius. sed et qui porcum uel capram uel uerbecem abducunt, non tam grauiter ut hi qui maiora animalia abigunt plecti debent.
3 quamquam autem Hadrianus metalli poenam, [item] temporari 15
[operis] uel etiam gladii praestituerit, attamen qui honestiore loco nati sunt non debent ad hanc poenam pertinere, sed aut relegandi
4 erunt aut remouendi ordine. Romae tamen etiam bestiis subici abigeos uidemus: et sane qui cum gladio abigunt, non inique
hac poena adficiuntur. 20

(TITVLVS XII.)

DE INCENDIARIIS.

XII. 1, 1 Moyses dicit: Si exierit ignis et inuenerit spinas et comprehenderit areas uel spicas aut campum, aestimationem restituet ille qui succendit ignem. 25

XII. 2, 1 Paulus libro sententiarum [quinto] sub titulo de incendiariis :

Qui casam aut uillam inimicitiarum gratia incenderunt, humiliores in metallum aut in opus publicum damnantur, 2
honestiores in insulam relegantur. fortuita incendia, quae casu uenti furentis uel incuria ignem supponentis ad usque uicini agros 30
euadunt, si ex eo seges uel uineae uel oliuae uel fructiferae arbores concrementur, datum damnum aestimatione sarciatur.

c. 8 = *ig.* xlvii. 14, 1-4.

c. 2 = *Paulus (Vesont.)* v. 20, 2, 3.

Line 1. *Mandatis*, i.e. orders to the governor of a prison or director of the gladiatorial contests.

Line 9. *Abigendi* from *Digest*. Mommsen retains *abigei* from the MSS.

Line 12. *Relictum* supplied from the *Digest*, *Equos in solitudine relictos*. Mommsen omits, following the MSS.

Line 15. *Item temporari operis*. *Item* and *operis* are supported by the MSS. and *Digest*; but omitted by Mommsen. See above, chap. vii. § 1, for the terms of Hadrian's rescript: *in opus et nonnumquam temporarium damnantur*.

Lines 23-25. Exod. xxii. 6: If fire break out, and catch in thorns, so that the stacks of corn, or the standing corn, or the field be consumed therewith; he that kindled the fire shall make restitution.

to the games are not necessarily despatched; they may even, after a time, be restored to freedom, or be discharged from the obligation of being a gladiator; since, after five years, they may be restored to freedom, while, on the expiration of three years, they are permitted to receive their discharge from the gladiatorial games.

The same Rescript of the late Emperor Hadrian emphasizes the principle that the punishment of cattle-raiders is not in all places alike.

Ulpian, in book and under title as above :

Strictly speaking, those are regarded as cattle-raiders, who steal cattle from the pasture or the folds, making, so to speak, booty of them; and practise cattle-raiding as a profession, driving off horses from the droves or oxen from the herds. But if one drives off a stray ox or a solitary horse he is not a raider, but rather a thief.

Again, driving off a swine, goat or wether, ought not to be punished as severely as the raiding of larger beasts.

And though Hadrian prescribed labour in the mines, or on the public works, for a limited term, or even the sword as the penalty, offenders of the better classes should nevertheless not be subjected to such a punishment; they are either to be deported or degraded.

We see, however, that at Rome cattle-raiders are even flung to the wild beasts; a punishment which is not unjust for such as make armed raids on cattle.

TWELFTH TITLE.

“OF INCENDIARIES.”

Moses says: If a fire break out and come upon thorns and consume threshed-out corn, or standing corn, or a field, he who kindled the fire shall restore the value.

Paulus, in the (Fifth) Book of The Sentences, under the Title “Of Incendiaries” :

Those of the lower ranks, who, out of enmity, have set fire to a hut or country mansion are sentenced to the mines or public works: should they be of the better classes, to deportation to an island.

If, owing to an unexpected gale of wind, or the carelessness of the one who lit the fire, accidental conflagrations spread to a neighbour's lands, and, as a result, crops of corn, vines, olive-trees, or other fruit-bearing trees are burnt down, the damage caused must be assessed and made good.

PAGE 114, lines 27-29. *Qui casam.....relegantur.* Cp. *Digest* xlviii. 19, l. 28, § 12.
 Lines 29-32. *Fortuita incendia.....sarciatur.* Cp. *Digest* ix. 2, l. 30, § 3.
 Line 31. *uineae.* Mommsen has *uinea*.

XII. 3, 1 Idem Paulus eodem libro et titulo :

Commissum uero seruorum, si domino uideatur, noxae
2 deditione sarcitur. messium sane per dolum incensores[uel]uinea-
rum oliuarumue aut in metallum humiliores damnantur aut
honestiores in insulam relegantur. 5

XII. 4, 1 Idem Paulus libro et titulo qui supra :

Incendia, si qui in oppido praedandi causa faciunt, facile
capite puniuntur.

XII. 5, 1 Ulpianus libro octauo de officio proconsulis [sub titulo] de
naufragis et incendiariis: 10

Incendiariis lex quidem Cornelia aqua et igni interdicti iussit,
sed re uarie sunt puniti. nam qui data opera in ciuitate incen-
dium fecerunt, si humillimo loco sunt, bestiis subici solent, si in
aliquo gradu et Romae id fecerunt, capite puniuntur: aut certe
2 [deportationis poena]adficiendi sunt qui haec committunt. sed eis 15
qui non data opera incendium fecerint plerumque ignoscitur, nisi
in lata et incauta neglegentia uel lasciuiia fuit.

XII. 6, 1 Paulus libro singulari de poenis paganorum sub titulo de
abigeis dicit :

Incendia, si qui in oppido praedae causa admiserint, capite 20
puniuntur: qui casu insulam aut uillam, non ex inimicitiis incen-
derint, leuius. fortuita enim incendia ad forum remittenda sunt,
ut damnum uicinis sarcitur.

XII. 7, 1 Ulpianus libro XVIII ad edictum, sub titulo si fatebitur iniuria
occisum esse, in simplum et cum diceret: 25

Item si insulam meam adusseris uel incenderis, Aquiliae
actionem habebo, idemque est, et si arbustum meum uel uillam

c. 3 = *Paulus (Vesont.)* v. 20, 4, 5. c. 4 = *Paulus (Vesont.)* v. 20, 1.
c. 7 = *Dig.* ix. 2, 27, 7 *varied.*

Line 3. [uel], with Huschke.

Line 7. *Incendia si qui*, with Huschke. Mommsen, following the MSS., reads *incen-
diarii qui quid*.

Lines 12-14. *Qui data.....aut certe*. This passage is found with some variations in
Digest xlvii. 9, l. 12, § 1.

Line 15. [*Deportationis poena*.] The above passage from the *Digest* concludes
insulam deportantur. I have, therefore, adopted Blume's suggestion to fill up the lacuna
in the MSS., after *certe* and before *adficiendi*.

Lines 15-17. *Sed.....fuit*. Cp. *Digest* xlvii. 9, l. 11.

Line 19. *Abigeis*, evidently a mistake through thoughtless copying of the inscription to
Title xi. 6, § 1. It should be *incendiariis*.

Line 20. *Incendia si qui*, with Huschke. Mommsen reads with the MSS., *incendiarii
qui*, and *id* before *admiserint*.

Lines 20-23. Cp. above in this title chaps. 2 and 5; also *Digest* xlvii. 9, l. 9.

Line 22. *Ad forum remittenda*. Cp. above Title vii., chap. 4, § 1, and Title, xi
chaps. 4 and 6.

Line 24. *Si fatebitur*. Cp. *Digest* ix. 2, l. 26.

The same Paulus, in the same Book and Title :

Damage caused by slaves may, at the master's discretion, be compensated by their noxal surrender.

Those who maliciously set fire to crops, vines or olive-trees are, if they are of lower rank, sentenced to the mines ; if of the better classes, to deportation to an island.

The same Paulus, in the same Book and Title as above :

Those who commit arson in a town for the purpose of plunder are, without hesitation, sentenced to death.

Ulpian, in the Eighth Book of the Proconsular Functions, [under the Title] "Of Shipwrecked Persons and Incendiaries " :

The Lex Cornelia ordered incendiaries to be interdicted from fire and water. In actual practice, however, the punishments are differentiated ; for those who have deliberately caused a fire in a city are, if of the lower classes, thrown to the wild beasts ; if they are of some standing and committed the offence at Rome, they suffer capital punishment, or, at least, deportation is inflicted on the perpetrators of such crimes.

But those who have caused a fire unintentionally, are generally pardoned unless there was gross and careless negligence or wantonness.

Paulus, in his Single Book "Concerning the Punishment of Peasants," under the Title "Of Cattle-raiders," says :

Persons who have committed arson in a town for the sake of plunder suffer capital punishment. But those who have set fire to a tenement-house or country seat accidentally, and not out of malice, are dealt with more leniently. Cases of accidental conflagration are to be sent to the Civil Court, so that damage caused to the neighbours should be made good.

Ulpian, in the Eighteenth Book of his Commentary on the Edict, under the Title, "If he will admit that the death was wrongfully caused, the claim should be for simple damages," and when he said :

If you have damaged my tenement-house by fire, or set it on fire, I shall have an Aquilian action. This also applies (if you have damaged) my shrubbery or country seat.

PAGE 116, line 25. *Etcum diceret*. See above, Title ii., chap. 4, § 1. Mommsen explains it to mean that only the pertinent portion of the passage is quoted by the Collatio. This would be analogous to the statement below, Title, xv., 2, § 4, *Cuius rescripti uerba quia multa sunt de fine eius ad locum haec pauca subieci*. Huschke prefers the emendation *ut condiceret*, which would be part of the quotation from Ulpian.

- XII. 7, 2 meam. quod si dolo quis insulam exusserit, etiam capitis poena plectitur, quasi incendiarius.
- 3 Item si quis insulam uoluerit exurere et ignis etiam ad uicini insulam peruenerit, Aquilia tenebitur lege uicino etiam, non minus inquilinis ob res eorum exustas, et ita Labeo libro XV 5 responsorum refert.
- 4 Sed si stipulam in agro tuo incenderis ignisque euagatus ad praedium uicini peruenerit et illud exusserit, Aquilia lex locum habeat an in factum actio sit, fuit quaestio.
- 5 Sed plerisque Aquilia lex locum habere non uidetur, et ita 10 Celsus libro XXXVII digestorum scribit. ait enim 'si stipulam incendentis ignis effugit, Aquilia lege eum non teneri, sed in factum agendum, quia non principaliter hic exussit, sed dum aliud egit, sic ignis processit.'
- 6 Cuius sententia et rescripto diui Seueri conprobata est in haec 15 uerba: 'profitere propter ignem, [qui] pabuli gratia factus culpa seruorum Veturiae Astiliae euagatus agrum tuum, ut proponis, depopulatus est, ad exemplum legis Aquiliae noxali iudicio actura: si litis aestimatio permittitur, iudicium consistere potest.' uidelicet non est uisa Aquilia sufficere. 20
- 7 Si fornacarius seruusue aedium conductoris coloniue ad fornacem obdormisset et uilla fuerit exusta, Neratius scribit ex locato conuentum praestare debere, si negligens in elegendis ministeriis fuit. ceterum si alius ignem subiecerit fornaci, alius negligenter custodierit, [an] tenetur? namque qui non custodit, 25 nihil fecit: qui recte ignem subiecit, non peccauit: quemadmodum si hominem medicus recte secuerit, sed negligenter uel ipse uel alius curauerit, Aquilia cessat. quid ergo est? et hic puto ad exemplum Aquiliae dandam actionem tam in eum, qui ad fornacem obdormiuit uel negligenter custodit, quam in medicum qui 30 negligenter curauit, siue homo periit siue debilitatus est.

c. 7, 3. si quis — exustas = *Dig. ix. 2, 27, 8.*

c. 7, 7 = *Dig. ix. 2, 27, 9, with some omissions.*

Line 21. *Si fornacarius seruusue aedium conductoris coloniue*, with Huschke. Mommsen reads *Si forte seruus, qui idem conductor est coloni.*

Lines 26-28. *Quemadmodum.....cessat.* Cp. *Digest ix. 2, 27, pr.*

But if anyone has maliciously burnt down a tenement-house, he is even capitally punished as an incendiary.

If anyone has attempted to burn down a tenement-house, and the fire has reached his neighbour's tenement, he will be liable to his neighbour under the *Lex Aquilia* (for damage to the house), and not less so to the tenants for their property lost by fire. And thus Labeo reports in the Fifteenth Book of his Responses.

But if you had been burning stubble in your field, and the fire spread and reached your neighbour's property and burnt it, it was a moot point whether an action would lie under the *Lex Aquilia*, or whether it was necessary to have an action on the case. Most authorities hold that the *Lex Aquilia* does not here apply, and so Celsus writes in the Thirty-seventh Book of his Digests. His words are: "If, in burning stubble, the fire escapes, the defendant is not liable under the *Lex Aquilia*, but an action on the case will lie, since he did not cause the conflagration directly, but the fire spread while his attention was otherwise engaged."

His opinion is also approved in a rescript of the late Emperor Severus in the following terms: "You propose suing in a noxal action, framed after the formula of the *Lex Aquilia*, for damages caused by a fire lit for the purpose of preparing food, which spread through the fault of Veturia Astilia's slaves, and, as you say, laid waste your field. Lay an information: the trial can take place when the amount of the claim has been admitted." Obviously the Aquilian Action was not deemed sufficient to meet the case.

If a kiln-keeper or a house-slave belonging either to the hirer of a kiln or a tenant had fallen asleep at the kiln and a country seat has been burnt down, Neratius writes that if sued in an action of hire, the hirer or tenant will have to make good the loss if he was actually negligent in the choice of his servants. But if one lit the furnace, and another watched the fire carelessly, is he liable? The one who did not watch, did nothing; the one who properly kindled the fire was not in fault; just as when a surgeon competently operated on a man but either the operator himself or another person was negligent in the after treatment, the Aquilian Action will not lie. What then is the practical conclusion? Here, I think, an action framed on the *Lex Aquilia* should be given against the man who fell asleep at the kiln, or kept watch negligently, just as it is given against the practitioner who treated the patient negligently, whether the latter died or was disabled. It is no defence that the

Nec quisquam dixerit in eo qui obdormiuit rem eum humanam et naturalem passum, cum deberet uel ignem extinguere uel ita
 XII. 7, 8 munire, ut non euagaretur. item libro VI ex Vibiano relatum est: si furnum secundum parietem communem haberes, an damni iniuria teneris? et ait [Proculus] agi non posse Aquilia lege, quia 5
 nec cum eo qui focum haberet: et ideo aequius putat in factum actionem dandam. sed non proponit exustum parietem. sane enim quaeri potest, [si] nondum mihi damnum dederis et ita ignem habeas, ut metuum ne mihi des, an aequum sit me interim actionem, id est in factum inpetrare? fortassis enim de hoc senserit Proculus. 10
 9 nisi quis dixerit damni non facti sufficere cautionem. sed et si qui serui inquilini insulam exusserint, libro X Vrseius refert Sabinum respondisse lege Aquilia seruorum nomine dominum noxali iudicio conueniendum: ex locato autem dominum teneri negat. Proculus autem respondit, cum coloni serui uillam 15
 exusserint, colonum uel ex locato uel lege Aquilia teneri, ita ut colonus seruos posset noxae dedere et si uno iudicio res esset
 10 iudicata, altero amplius non agendum. item Celsus libro XXVII digestorum scribit: si, cum apes meae ad tuas aduolassent, tu eas exusseris, quosdam negare competere legis Aquiliae actionem, 20
 inter quos et Proculum, quasi apes domini mei non fuerint. sed id falsum esse Celsus ait, cum apes reuenire soleant et fructui mihi sint. sed Proculus eo mouetur, quod nec mansuetae nec ita clausae fuerint. ipse autem Celsus ait nihil inter has et columbas interesse, quae, si manum refugiunt, domi tamen fugiunt. 25

(TITVLVS XIII.)

DE TERMINO AMOTO.

XIII. 1, 1 Moyses dicit:

Non transmouebis terminos proximi tui, quos constituerunt patres tui uel principes possessionis tuae. 30

c. 7, 8 = *Dig.*, ix. 2, 27, 10, *with some omissions*.c. 7, 9. Proculus — agendum = *Dig.* ix. 2, 27, 11, *with some omissions*.c. 7, 10. si cum — exusseris = *Dig.* ix. 2, 27, 12.

Line 18. *Agendum*. The *Digest* continues after *agendum* thus: *Sed haec ita, si culpa colonus careret; ceterum si noxios seruos habuisset, damni eum iniuria teneri, cur tales habuerit. Idem seruandum et circa inquilinorum insulae personas scribit. Quae sententia habet rationem.*

Line 25. *Domi tamen fugiunt*. Huschke has *domitae tamen fugiunt*: Though they escape from the hand, they escape as domesticated birds. Mommsen's *domi* ought, perhaps to be *domum*.

Lines 29-30. Deut. xix. 14: Thou shalt not remove thy neighbour's landmark, which they of old time have set in thine inheritance, which thou shalt inherit in the land that the Lord thy God giveth thee to possess it. Cp. Deut. xxvii. 17.

sleepers were overcome by a weakness inherent in human nature since it was his bounden duty either to have extinguished the fire or taken the requisite precautions to prevent it spreading.

The following case is likewise cited in the Sixth Book from Vibianus. If you should have a bake-house next to a party-wall would you be liable in an action for unlawful damages? [Proculus] says: An action will not lie under the *Lex Aquilia*, seeing that the owner of an ordinary stove cannot be sued. He accordingly thinks it fair that an action on the case be granted. But he does not deal with the event of the wall being burnt down. The question may indeed be put: You have not yet occasioned me actual damage, but the fire on your premises is such as to cause me to apprehend damage; is it right that I obtain in the interim an action, that is, on the case? Possibly, Proculus had such a situation in mind, unless it be argued that, where damage is apprehended, the giving of security would be sufficient.

Moreover, where a tenant's servants have burnt down a tenement house, Urseius, in his Tenth Book, quotes a response of Sabinus that the master may be sued under the *Lex Aquilia* in a noxal action to answer for his slaves, but says the master cannot be sued in an action of hire.

Proculus, however, gave a response that when a tenant farmer's slaves burn down a country mansion, he can be sued either in an action of hire or under the *Lex Aquilia*, but may discharge the claim by a noxal surrender of the slave; and once the claim has been judicially determined, no further action can be brought.

Celsus, in the Twenty-seventh Book of his Digests, writes: If my bees swarmed with yours and you burnt them, some jurists, among them Paulus, say that no action under the *Lex Aquilia* will lie, on the ground that the bees at the time were not in my ownership. "This," says Celsus, "is wrong, since bees usually return to their hives and are a source of profit to me." Proculus was influenced by the consideration that bees are neither domesticated, nor kept shut up. The answer of Celsus is that there is no difference between them and pigeons, which, though they escape from the hand, nevertheless fly home.

THIRTEENTH TITLE.

"OF REMOVING BOUNDARY MARKS."

Moses says:

Thou shalt not remove thy neighbour's boundary marks,

XIII. 2, 1 Paulus libro sententiarum [primo] sub titulo finium regundorum:

In eum, qui per uim terminos deiecit uel amouit, extra ordinem anima aduertitur.

XIII. 3, 1 Ulpianus libro octauo de officio proconsulis sub titulo de termino moto:

Eos qui terminos mouerunt non in puerum id facere debere
a. 119 diuus Hadrianus Terentio Gentiano XVII k. Sept. se III consule
2 rescripsit, quo rescripto poenam uariam statuit. uerba rescripti
ita se habent: 'pessimum factum eorum, qui terminos finium 10
causa positos abstulerunt, dubitari non potest. poenae tamen
modus ex condicione personae et mente facientis magis statui
potest: nam si splendiores sunt personae, quae conuincuntur,
non dubito quin occupandorum aliorum finium causa id admiserint,
et possunt in tempus, ut cuiusque patitur aetas, relegari [id est si 15
iuuenior in longius, si senior recisus: si uero alii negotium gesserunt
et ministerio functi sunt, castigari] et sic in biennium aut
triennium ad opus publicum dari. quod si per ignorantiam aut fortuito
lapides usus causa furati sunt, sufficit eos uerberibus coerceri.'

(TITVLVS XIII.)

20

DE PLAGIARIIS.

XIV. 1, 1 Moyses dicit: Quicumque plagiauerit quemquam Israhel et uendiderit eum, morte moriatur.

XIV. 2, 1 Paulus libro sententiarum V sub titulo ad legem Fabiam:

Lege Fabia tenetur, qui ciuem Romanum ingenuum liber- 25
tinumue seruumue alienum celauerit uendiderit uinxerit com-
2 parauerit. et olim quidem huius legis poena nummaria fuit, sed
translata est cognitio in praefectum urbis, itemque praesidis

c. 2 = Paulus i. 16. c. 3, 2. This rescript is quoted by Callistratus, Dig. xlvii. 21, 2:
Title xiv. c. 2. From this passage Paulus v., 30b is restored.

Lines 3-4. *Extra ordinem*; trial by magistrates without reference to *iudices*, the case being criminal and not to be met by pecuniary penalties. Cp. *Digest* xlvii. 21, l. 1, and *ibid.* l. 3, § 2, *fin.*

Lines 22-23. Exod. xxi. 16: And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.

Deut. xxiv. 7: If a man be found stealing any of his brethren of the children of Israel, and maketh merchandise of him, or selleth him; then that thief shall die; and thou shalt put evil away from among you.

Lines 25-27. *Lege Fabia.....comparauerit.* Cp. Paulus v. 6, § 14; *Digest* xlviii. 15, l. 1, and *ibid.*, l. 6, § 2; Justinian's Code, ix. 20, l. 9 and 15. See also below in this title, chap. 3 §§ 4 and 5.

Line 27—page 124, line 3. *Et olim.....relegantur.* Paulus v. 6, § 14 and *Digest* xlviii. 15, l. 7.

Line 28. *Translata est cognitio in praefectum urbis.* See below chap. iii., § 2. So also the inscription in Justinian's Code ix. 20, l. 7, referring to a case coming under this law, reads: *Idem A. A. Maximo Pf. U. (=Praefecto urbis).*

Cognitio. After this word Huschke supplies (*in Italia*).

which thy fathers or the chiefs of thy possession have set up.

Paulus, in the First Book of The Sentences, under the title
“Of Adjustment of Boundaries”:

The forcible throwing down or removal of boundary marks is dealt with by the Praetor, in his extraordinary jurisdiction.

Ulpian, in the Eighth Book of the Proconsular Functions, under the title “The Removal of Boundary Marks”:

The Emperor Hadrian sent, on the 16th of August, [in the third year of his Consulship,] a rescript to Terentius Gentianus, that removers of landmarks should not be suffered to go unpunished. In this rescript he fixed varying penalties.

The terms of the Rescript are as follows: Removal of landmarks, which are set up to indicate boundaries, is undoubtedly a most wicked act. The punishment to be awarded, however, is determined by the status of the offender and his motive. If those convicted be persons of rank, I do not doubt that their purpose was to appropriate lands belonging to others. They may be deported for terms proportionate to their age [that is, the younger offender for a longer period; the older for a shorter one. If others have performed the actual removal in obedience to orders, they are to be whipped] and sent for two or three years to the public works. But if they have stolen the stones in order to use them, not knowing that they were landmarks, or thoughtlessly, a flogging is sufficient punishment.

FOURTEENTH TITLE.

“OF KIDNAPPERS.”

Moses says:

Whosoever stealeth anyone in Israel and selleth him, let him surely die.

Paulus, in the Fifth Book of The Sentences, under the title
“On the Lex Fabia”:

Whosoever has concealed, sold, imprisoned, placed in bonds, or acquired a free-born Roman citizen, freedman, or another man's slave, is liable under the Lex Fabia.

The penalty under this law was formerly monetary; the offence has, however, been transferred to the jurisdiction of the Urban Prefect and the extraordinary jurisdiction of the President of the Province; and offenders belonging to the lower

prouincia extra ordinem meruit animaduersionem. ideoque humiliores aut in metallum dantur aut in crucem tolluntur, honestiores adempta dimidia parte bonorum in perpetuum relegantur.

XIV. 2, 3 si seruus sciente domino alienum seruum subtraxerit uendiderit celauerit, in ipsum dominum animaduertitur: quod si id domino 5 ignorante commiserit, in metallum datur.

XIV. 3, 1 Ulpianus libro nono de officio proconsulis sub titulo ad legem Fabiam:

Frequens est etiam legis Fabiae cognitio in tribunalibus praesidium, quamquam quidam procuratores Caesaris usurpauerint 10
2 tam in prouinciis quam Romae. sed enim iam eo peruentum est constitutionibus, ut Romae quidem praefectus urbis solus super ea re cognoscat, si intra miliarium centesimum sit iniuria commissa: enimuero si ultra centesimum, praefectorum praetorio erit cognitio. in prouincia est praesidium prouinciarum, nec aliter 15
procuratori Caesaris haec cognitio iniungitur, quam si praesidis partibus in prouincia fungatur. plane post sententiam de Fabia latam procuratoris partes succedunt huiusce rei. attamen procurator qui nullam prouinciam regit licet de capitalibus causis cognoscere nec soleat, tamen ut de lege Fabia possit 20
cognoscere, imp. Antoninus constituit. idem legis Iuliae de adulteris coercendis constitutione imperatoris Antonini quaestionem accepit. lege autem Fabia tenetur, qui ciuem Romanum eumue, qui in Italia liberatus sit, celauerit uinxerit uinctumue habuerit, uendiderit emerit, quique in eam rem socius 25
fuerit: cui capite primo eiusdem legis poena iniungitur. si seruus quis sciente domino fecerit, dominus eius sestertiis quinquaginta

Line 13. *Iniuria*, Huschke omits as superfluous after *ea re* in the previous line. Possibly *iniuria* here means offence. Huschke, instead of *iniuria commissa*, has *in Fabiam commissum*. *In Fabiam* also seems superfluous.

Lines 15-17. *In prouincia.....fungatur*. Cp. Justinian's Code ix. 20, l. 4; *ibid.* ix. 47, l. 2; *ibid.* iii. 26, l. 3; *Digest* 1, 19, l. 3 *pr.*

Lines 18-20. *Huiusce rei.....soleat*. Huschke reads *Uice praesidis tamen procurator, qui illam prouinciam regit, licet de capitalibus causis cognoscere (nequeat) nec soleat*: "Though the Procurator who governs that province on behalf of the President cannot, and usually does not, exercise jurisdiction in capital charges." Huschke adds *nequeat*, on the ground that those belonging to the upper classes could decline the jurisdiction of the Procurator by appealing to the Emperor (see Acts of the Apostles, xxv. 9 and 10). He justifies his reading of the passage on the ground that a Procurator could not be said *regere prouinciam*, unless he acts on behalf of the *praeses prouinciae*, and during his absence. He also quotes *Digest* xxxix. 4, l. 16, § 1, to the effect that Procurators could not even judge a slave charged under the *Lex Julia de Adulteriis*; while here they are said to have jurisdiction in such cases, even against free men.

Lines 23-26. *Lege.....fuerit*. Cp. above in this title, chap. 2, § 1.

Line 23. *Ciuem Romanum*. Huschke adds (*Latinum, Italicum, ingenuum*), and suspects that above (page 122, line 25), after *ciuem Romanum*, the word *Latinum* has fallen

classes are therefore sent to the mines or crucified; those of honourable rank are deprived of half their property and deported for life.

If a slave steal, sell, or hide the slave of another master, with his own master's knowledge, the latter is punished. But if the master is ignorant of the act, the slave is sent to the mines.

Ulpian, in the Ninth Book of The Proconsular Functions, under the title "On the Lex Fabia":

Cases under the Lex Fabia are commonly taken in the President's Courts, though some of the Imperial Procurators, both at Rome and in the Provinces, have arrogated the jurisdiction to themselves. This practice has, under the Constitutions, gone so far that the City Prefect alone takes cognisance of the matter if the offence has been committed within one hundred miles of the City. Outside this limit, the jurisdiction belongs, of course, to the Prætorian Prefect; in the provinces it belongs to the Presidents of the Provinces, and is only vested in the Imperial procurator when he acts there as substitute for the President. Clearly, after a sentence under the Lex Fabia has been pronounced, the Procurator's functions follow.

Nevertheless, a Procurator, who is not governing a province, though usually without jurisdiction in capital charges, has been empowered by a constitution of the Emperor Antoninus to try offences under the Lex Fabia. And enquiries into cases under the Lex Julia for checking adulteries have, by virtue of a constitution issued by the Emperor Antoninus, likewise devolved upon this official.

The Lex Fabia is directed against anyone who hides, binds, holds bound, sells or buys a Roman citizen, or any one emancipated in Italy, as well as against an accomplice to these offences; the penalty is fixed in the first chapter of this statute. If a slave commit the offence with the knowledge of his master, the same chapter provides that the latter be fined 50,000 sesterces.

PAGE 124 (cont.) out. This is not necessary. At the time when the *Lex Fabia* was passed, it applied to all free men and freed men in Italy, and was afterwards extended to the provinces. The *Latini* should therefore, also have been named. But in Ulpian's days there were no longer *Latini* except *Libertini* and *dediticii*, hence their omission as a separate class (Mommson *in loco*).

Line 26. *Iniungitur*. Huschke adds (*sestertium C milium*); Mommson thinks that it was deliberately omitted as obsolete.

Line 26—page 126, line 1. *Si seruus.....punitur*. Cp. *Digest* xl. 1, l. 12.

XIV. 3, 5 milibus eodem capite punitur. eiusdem legis capite secundo tenetur, qui alieno seruo persuaserit, ut dominum fugiat quiue alienum seruum inuito domino celauerit uendiderit emerit dolo malo, quiue in ea re socius fuerit: iubeturque populo sestertia quinquaginta milia dare. et reliqua.

6 Sciendum tamen est ex nouellis constitutionibus capitali sententia plagiatores pro atrocitate facti puniendos: quamuis et Paulus relatis supra speciebus crucis et metalli huiusmodi reis inrogauerit poenam.

(TITVLVS XV.)

XV. 1, 1 DE MATHEMATICIS, MALEFICIS ET MANICHAËIS.

Moyses dicit:

Non inueniatur in te qui lustret filium tuum aut filiam tuam, nec diuinus apud quem sortes tollas: nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. nec intendas prodigia, nec interroges mortuos. (non inueniatur in te auguriator nec inspector auium nec maleficus aut incantator nec pythonem habens in uentrem nec haruspex nec interrogator mortuorum nec portenta inspicies): omnia namque ista a domino deo tuo damnata sunt et qui fecerit haec. propter has enim abominationes deus eradicabit Chaldaeos a facie tua. tu autem perfectus eris ante dominum deum tuum: gentes enim istae, quas tu possides, auguria et sortes et diuinationes audiebant.

Lines 1-5. *Eiusdem.....dare.* Cp. *Digest* xi. 4, l. 1, § 2, and also *Digest* xlviii. 15.

Line 6. *Nouellis constitutionibus.* Cp. Justinian's Code, ix. 20, ll. 7 and 16. The former constitution (l. 7) is by the Emperors Diocletian and Maximian (287 c.e.); the second (l. 16) is by Constantine (315 c.e.). Cp. also Theodosian Code, ix. 18.

Lines 13-24. Deut. xviii. 10-14: There shall not be found among you anyone that maketh his son or his daughter to pass through the fire,^a or that useth divination, or an observer of times,^c or an enchanter,^d or a witch,^e or a charmer,^f or a consulter with familiar spirits,^g or a wizard,^h or a necromancer.

For all that do these things are an abomination unto the Lord: and because of these abominations the Lord thy God doth drive them out before thee.

Thou shalt be perfect with the Lord thy God.

For these nations, which thou shalt possess, hearkened unto observers of times, and unto diviners: but as for thee, the Lord thy God hath not suffered thee so to do.

The Hebrew original for the last word in verse 10, rendered "witch," is masculine, and means "wizard."

The traditional Jewish interpretation of—

^a = A worshipper of Moloch.

^b = One who stakes events on a chance.

^c = An observer of times, or, according to one view, a prestidigitateur.

The second chapter of this law is directed against anyone who persuades another man's slave to run away from his master or, against the master's wish, hides, sells or fraudulently buys a slave, or abets such offences. He is ordered to pay 50,000 sesterces to the public treasury, etc.

It must, however, be noted that, according to recent constitutions, kidnappers are to be capitally punished, as befits the heinousness of the crime, though Paulus, indeed, in the passage cited above, also says that criminals of this type should be sentenced to crucifixion or the mines.

TITLE XV.

OF ASTROLOGERS, SORCERERS AND
MANICHAEANS.

Moses says :

Let there not be found in thee any one who purgeth thy son or daughter (by fire), nor a diviner with whom thou castest lots ; nor shalt thou countenance makers of poisons, imposters who say what it is that a woman has conceived, since these are misleading tales. Nor shalt thou give heed to prodigies, nor enquire of the dead.

Let there not be found in thee an augur, nor examiner of birds, nor sorcerer, nor enchanter, nor one that has a snake in his belly, nor a soothsayer, nor an enquirer of the dead, nor a watcher of portents.

For all these things as well as the doer of them are condemned by the Lord, thy God. For because of these abominations God will uproot the Canaanites from before thee.

But thou shall be perfect before the Lord thy God.

For those nations which thou wilt possess listened to auguries, lots and divinations.

PAGE 126 (cont.) ^d = A superstitious man; e.g., who refuses to go on a journey because his bread fell out of his hands, or a stag crossed his path.

^e = Wizard.

^f = A snake-charmer, who collects snakes into one place.

^g = A wizard, called *pithom* = *pytho*, who speaks from his armpit.

^h = One who puts the bone, called *Jaddua*, into his mouth, and the bone speaks.

The Collatio mostly follows the Septuagint, but translates the terms in accordance with the superstitions of the times.

Line 15. *Quid conceptum habeat*, i.e., whether the foetus is that of a male or female child.

Line 17. *Auguriator* = observer of the flight of birds. *Inspector avium* = examiner of the entrails of birds.

XV. 2, 1 Ulpianus libro VII de officio proconsulis sub titulo de mathematicis et uaticinatoribus :

Praeterea interdictum est mathematicorum callida inpostura et obstinata persuasione. nec hodie primum interdici eis placuit, sed uetus haec prohibitio est: denique extat senatus consultum
a 17 Pomponio et Rufo cons. factum, quo cauetur, ut mathematicis Chaldaeis ariolis et ceteris, qui simile inceptum fecerunt, aqua et igni interdicatur omniaque bona eorum publicentur, et si externarum gentium quis id fecerit, ut in eum animaduertatur.
2 sed fuit quaesitum, utrum scientia huiusmodi hominum puniatur 10 an exercitio et professio. [et] quidem apud ueteres dicebatur professionem eorum, non notitiam esse prohibitam: postea uariatum. nec dissimulandum est nonnumquam inrepsisse in usum, ut etiam profiterentur et publice se praeberent. quod quidem magis per contumaciam et temeritatem eorum factum est, 15 qui uisi erant uel consulere uel exercere, quam quod fuerat
3 permissum. saepissime denique interdictum est fere ab omnibus principibus, ne quis omnino huiusmodi ineptiis se inmisceret, et uarie puniti sunt ii qui id exercuerint, pro mensura scilicet consultationis. nam qui de principis salute, capite puniti sunt uel 20 qua alia poena grauiore adfecti: enimvero si qui de sua suorumque, leuius. inter hos habentur uaticinatores, quamquam ii quoque plectendi sunt, quoniam nonnumquam contra publicam quietem imperiumque populi Romani improbandas artes exercent.
4 extat denique decretum diui Pii ad Pacatum legatum prouinciae 25 Lugudunensis, cuius rescripti uerba quia multa sunt, de fine eius
5 ad locum haec pauca subieci. denique diuus Marcus eum, qui motu Cassiano uaticinatus erat et multa quasi instinctu deorum
6 dixerat, in insulam Syrum relegauit. et sane non debent inpune ferre huiusmodi homines, qui sub obtentu ex monitu deorum 30 quaedam uel enuntiant uel iactant uel scientes confingunt.

Line 4. *Et obstinata persuasione.* Huschke has instead, *et opinatae artis persuasio*: "and the attempts to persuade people of the truth of their pretended art."

Line 5-9. *Denique.....animaduertatur.* The date of this *Senatus-consultum* according to Tacitus (*Annals* ii. 32) was the year 17 C.E.; according to Dio (lvii. 15) the year 16 C.E.

Lines 10-11. *Sed fuit.....professio.* Cp. Paulus, v. 21, § 4, *ibid.*, v. 23, § 18, and Theodosian Code, ix. 16, ll. 3 and 8, which forbid the learning or teaching of these arts.

Lines 17-20. *Saepissime.....consultationis.* Cp. Paulus v., 21, § 3.

Line 25. *Decretum.* The Emperor's decision on a legal point referred to him in his appellate jurisdiction.

Line 27. *Subieci.* Schulting thinks that the quotation referred to has dropped out. Huschke takes paragraph 6, lines 29-31 as the quotation which should come before paragraph 5. This seems plausible.

Line 27. *Marcus, i.e.,* Marcus Aurelius.

Line 28. *Motu Cassiano*, in the year 175, C. E. Cp. Justinian's Code ix. 8, l. 7 *pr.*

Ulpian, in the Seventh Book of The Proconsular Functions, under the title of "Astrologers and Soothsayers":

Moreover, a ban has been put upon the crafty imposture and persistent persuasions of the astrologers. Nor has this been forbidden them to-day for the first time; the prohibition is of long standing. In fact, a *Senatus-consultum*, passed in the Consulship of Pomponius and Rufus, is extant, which provides that astrologers, Chaldeans, soothsayers, and others who engage in the like practices, be interdicted from fire and water, and all their property confiscated, and if the offender be a foreigner, he shall be punished with death.

It was a moot point whether the knowledge or the exercise and practice of this art is punished. The ancient authorities indeed said that practice and not mere knowledge was forbidden; this view afterwards changed.

We must not hide from ourselves that there have been times when these arts so crept into use that they were even publicly practised and advertised. But this was due to the contumacy and audacity of those who had been observed to have had recourse to or practised the arts, rather than to any legal sanction.

Nearly all the Emperors have indeed, time after time, issued interdicts which forbid meddling with such meaningless things, and those practising them were punished in accordance with the character of the consultation. If the Emperor's health was the subject of the consultation, death or other severe punishment was inflicted; the penalty was lighter where the enquiry concerned the consulter's own health or that of his relatives. This last class also includes soothsayers, though they, too, must be punished, because they sometimes exercise their reprehensible arts to the prejudice of the public peace and the Roman Empire.

Finally, there is extant a decree of the late Emperor Antoninus Pius, to Pacatus, Lieutenant-General of the Province of Lyons; and the rescript being rather long, I have quoted these few, relevant words.

And indeed, the Emperor Marcus deported to the island of Syrus one who, in the sedition of Cassius, played the soothsayer, and made many statements as though under divine inspiration.

And surely we ought not to allow men of this character to go unpunished, who, pretending that they have divine messages, make or circulate announcements, or feign that others have this knowledge.

XV 3, 1 Gregorianus libro VII sub titulo de maleficis et Manichaeis:

Impp. Diocletianus et Maximianus AA. [et Constantius] et Maximianus nobilissimi [CC.] Iuliano proconsuli Africae. Otia maxima interdum homines incommodioris condicionis naturae humanae modum excedere hortantur et quaedam genera inanissima ac turpissima doctrinae superstitionis inducere suadent, ut sui erroris arbitrio pertrahere et alios multos uideantur, Iuliane karissime. sed dii immortales prouidentia sua ordinare et disponere dignati sunt, quae bona et uera sunt ut multorum et bonorum et egregiorum uirorum et sapientissimorum consilio et tractatu inlibata probarentur et statuerentur, quibus nec obuiam ire nec resistere fas est, neque reprehendi a noua uetus religio deberet. maximi enim criminis est retractare quae semel ab antiquis statuta et definita suum statum et cursum tenent ac possident. unde pertinaciam prauae mentis nequissimorum hominum punire ingens nobis studium est: hi enim, qui nouellas et inauditas sectas ueterioribus religionibus obponunt, ut pro arbitrio suo prauo excludant quae diuinitus concessa sunt quondam nobis, de quibus sollertia tua serenitati nostrae retulit, Manichaei, audiuius eos nuperrime ueluti noua [et] inopinata prodigia in hunc mundum de Persica aduersaria nobis gente progressa uel orta esse et multa facinora ibi committere, populos namque quietos perturbare nec non et ciuitatibus maxima detrimenta inserere: et uerendum est, ne forte, ut fieri adsolet, accedenti tempore conentur [per] execrandas consuetudines et scaeuas leges Persarum innocentioris naturae homines, Romanam gentem modestam atque tranquillam et uniuersum orbem nostrum ueluti uenenis de suis maliuolis inficere. et quia omnia, quae pandit prudentia tua in relatione religionis illorum, genera maleficiorum statutis euidentissime sunt exquisita et inuenta commenta, ideo aerumnas atque poenas debitas et condignas illis

Line 1. *Libro vii.* Thus the Berlin Codex. The Vercelli MS. has *vi.*; Schulting has *libro viii.*; Haenel's edition of the Gregorian Code, p. 44, gives it as *lib. xiv.*, title *iv.*

Line 5. *Incommodioris.* Mommsen has *in communione*, following the MSS. This reading, however, gives no sense.

Line 7. *Superstitionis.* Huschke has *superstitiosis* "and persuades superstitious people to bring in empty and scandalous doctrines." Huschke, on the authority of Suetonius, Julian 88, *decernentium ore*, supplies *ore* after *uirorum*, and contrasts *ore multorum* with *consilio sapientissimorum*.

Line 20. *De quibus.* Huschke begins with these words a new sentence.

Line 21. *Manichaei.* Huschke writes *Manichaeos*; Haenel, *Manichaeis*.

Lines 30-31. *Genera maleficiorum statutis euidentissime sunt exquisita et inuenta commenta.* Huschke has instead, *genera maleficiorum statuunt euidentissi-*

Gregorian, in the Seventh Book, under the title "Of Sorcerers and Manichaeans":

The Emperors Diocletian and Maximian [and Constantius] and Maximian to Julian, Proconsul of Africa: Well-beloved Julian: Excessive leisure sometimes incites ill-conditioned people to transgress the limits of nature, and persuades them to introduce empty and scandalous kinds of superstitious doctrine, so that many others are lured on to acknowledge the authority of their erroneous notions.

But the immortal Gods, in their Providence, have thought fit to ordain that the principles of virtue and truth should, by the counsel and deliberations of many good, great and wise men, be approved and established in their integrity. These principles it is not right to oppose or resist, nor ought the ancient religion to be subjected to the censure of a new creed. It is indeed highly criminal to discuss doctrines once and for all settled and defined by our forefathers, and which have their recognized place and course in our system. Wherefore we are resolutely determined to punish the stubborn depravity of these worthless people.

As regards the Manichaeans, concerning whom you have reported to us, who, in opposition to the older creeds, set up new and unheard-of sects, purposing in their wickedness, to cast out the doctrines vouchsafed to us by Divine favour in olden times, we have heard that they have but recently advanced or sprung forth, like strange and monstrous portents, from their native homes among the Persians—a nation hostile to us—and have settled in this part of the world, where they are perpetrating many evil deeds, disturbing the tranquillity of the peoples and causing the gravest injuries to the commonalties; and there is danger that, in process of time, they will endeavour, as is their usual practice, to infect the innocent, orderly and tranquil Roman people, as well as the whole of our Empire, with the damnable customs and perverse laws of the Persians as with the poison of a malignant serpent. And since all that your wisdom has set out in detail in your report of their religion shows that what our laws regard as

(PAGE 130 cont.)

morum, exquisita arte adinuenta (ac) commenta. The meaning is: "And since all the things which your wisdom has discovered in the religion of those people consist of classes of crimes of the clearest character, invented and contrived with consummate skill."

XV. 3. 6 statuimus. iubemus namque auctores quidem ac principes una cum abominandis scripturis eorum seueriori poenae subici, ita ut flammeis ignibus exurantur: consentaneos uero et usque adeo contentiosos capite puniri praecipimus, et eorum bona fisco 7 nostro uindicari sancimus. si qui sane etiam honorati aut 5 cuiuslibet dignitatis uel maiores personae [ad] adhuc inauditam et turpem atque per omnia infamem sectam, uel ad doctrinam Persarum se transtulerint, eorum patrimonia fisco nostro adsociari facies, ipsos quoque Phaenensibus uel Proconnensibus 8 metallis dari. ut igitur stirpitus amputari lues haec nequitiae de 10 saeculo beatissimo nostro possit, deuotio tua iussis ac statutis a. 302? tranquillitatis nostrae maturet obsecundare. Dat. prid. k. April. Alexandriae.

(TITULUS XVI.)

DE LEGITIMA SUCCESSIONE.

15

XVI. 1, 1 Scriptura diuina sic dicit:

Filiae Salfad adstantes ante Moysen et Eleazarum sacerdotem et principes omnemque senatum filiorum Israhel in foribus 2 tabernaculi testimonii dixerunt: pater noster mortuus est et filii non fuerunt ei, sed filiae, et ideo non deleatur nomen patris 20 3 nostri de medio tribus suae. non est ei masculus: date nobis 4 possessionem in medio fratrum patris nostri. et obtulit Moyses

Line 3. *Adeo*. Huschke emends *aduersos deos*. Cp. Paulus v. 21, § 2.

Line 9. *Phaenensibus uel Proconnensibus*. The former was in Arabia; the latter, Proconesum, an island in the Propontis (Huschke). Dirksen, has *Phocensibus* as an alternative reading to *Phaenensibus*. *Phocaea* was a city in Minor Phrygia. Mommsen quotes Theodoret, *Hist. Eccl.* 4, 22, *De Christianis Alexandrinis*: πολλοὶ.....τοῖς φενησίοις καὶ Προκοινησίοις παρέδιδοντο μετάλλοις. Eusebius, *Hist. Eccles.* 8, 13, *et de mart. Palaest.*, 7, mentions copper mines worked in the city of Phoenia, or Phoenus of Trachonis.

Line 12. Huschke gives the date 292-295. Mommsen suggests that, as Diocletian captured Alexandria after a siege of eight months in 297, that might be the year when this Constitution was published. But he was again at Alexandria in 302, and so, this too might be the date of the Constitution.

Line 17—page 134, line 8. Num. xxvii. 1-11: Then came the daughters of Zelophehad, the son of Hepher, the son of Gilead, the son of Machir, the son of Manasseh, of the families of Manasseh, the son of Joseph; and these are the names of his daughters; Mahlah, Noah, and Hoglah, and Milcah, and Tirzah. And they stood before Moses, and before Eleazar the priest, and before the princes and all the congregation, by the door of the tabernacle of the congregation, saying: Our father died in the wilderness, and he was not in the company of them that gathered themselves together against the Lord in the company of Korah; but died in his own sin, and had no sons. Why should the name of our father be done away from among his family, because he hath no son? Give unto us *therefore* a possession among the brethren of our father. And Moses brought their cause before the Lord. And the Lord spake unto Moses, saying: The daughters of Zelophehad speak right: thou shalt surely give them a possession of an inheritance among their father's brethren; and thou shalt cause the inheritance of their father to pass unto them. And thou shalt speak unto the children o

their misdeeds are clearly the offspring of a fantastic and lying imagination, we have appointed for these people the condign pains and penalties which are their due.

We order that the founders and heads of these sects be subjected to severe punishment, and, together with their abominable writings, burnt in the flames. We direct that their followers, if they continue recalcitrant, shall suffer capital punishment, and their goods be forfeited to the Imperial treasury.

And if those who have gone over to that hitherto unheard-of, scandalous and wholly infamous creed, or to that of the Persians, are persons who hold public office, or are of any rank or standing, you will see to it that their estates are confiscated and the offenders sent to the Phænensian or Proconnensian mines.

And in order that this plague of iniquity shall be completely extirpated from this our most happy age, let your zeal hasten to carry out our orders and commands. Given at Alexandria, March 31st.

TITLE XVI.

"OF STATUTORY SUCCESSION."

The Divine Scripture says thus :

The daughters of Salfad, standing before Moses and Eleazar the Priest and the princes and the whole body of Elders of the Children of Israel in the courts of the Tabernacle of Testimony said :

Our father is dead, and he had no sons but only daughters. Let not therefore the name of our father be blotted out from the midst of his tribe. He has no male child. Give to us a possession in the midst of our father's brothers.

(PAGE 132 cont.)

Israel, saying, If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter. And if he have no daughter, then ye shall give his inheritance to his brethren. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it : and it shall be unto the children of Israel a statute of judgment, as the Lord commanded Moses.

From the second half of verse 8, "then ye shall cause," till first half of verse 11, "and if his father have no brethren," has dropped out of the text of the Collatio. Observe that the middle part of the text, though essential, is omitted. The Hebrew is, as rendered in the A.V., "to his kinsman that is next to him of his family." The writer of the Collatio translated *de tribu eius* "of his tribe," which assimilates the text to the rule of Roman Law, that, failing *agnates*, the *gens* succeeded. The Greek is ἐκ τῆς φυλῆς, class or tribe. The Hebrew משפחה is a much smaller division than a tribe, the Hebrew term for which is שבט.

XVI. 1, 5 petitionem earum coram deo. et locutus est dominus Moysi
6 dicens: recte filiae Salphad locutae sunt: et ideo dabit is
7 possessionem hereditatis in medio fratrum patris earum. et dices
haec filiis Israhel: homo si decesserit et filium non habuerit,

dabit is hereditatem proximo eorum de tribu eius: et possidebit
8 omnia eius: et erit haec filiis Israhel iustificatio iudiciorum
secundum quae constituit dominus Moysi.

XVI. 2, 1 Gaius institutionum libro III legitimas sic ordinat succes-
siones:

Intestatorum hereditates lege duodecim tabularum primum
2 ad suos heredes pertinent. sui autem heredes existimantur liberi
qui in potestate morientis fuerunt, ueluti filius filiae, nepos
neptisue [ex filio], pronepos proneptisue ex nepote filio nato
prognatus prognataue. nec interest naturales [sint] liberi an
adoptiui. ita demum tamen nepos neptisue et pronepos pronep-
tisue suorum heredum numero sunt, si praecedens persona
desierit [in potestate parentis esse, siue morte id acciderit] siue
alia ratione, ueluti emancipatione. nam si per id tempus, quo
quisque morietur, filius in potestate eius sit, nepos ex eo suus
heres esse non potest. idem et in ceteris deinceps liberorum
3 personis dictum intellegimus. uxor quoque, quae in manu est,
[ei cuius in manu est] sua heres est, quia filiae loco est: item
nurus quae in filii manu est, nam et haec neptis loco est. sed
ita demum erit sua heres, [si] filius, cuius in manu sit cum pater
moritur, in potestate eius non sit. idemque dicimus et de ea,
quae [in] nepotis manu matrimonii causa sit, quia proneptis loco
4 est. postumi quoque, [qui], si uiuo parente nati essent, in
potestate eius futuri forent, sui heredes sunt.

c. 2 = *Gaius* iii. 1-17, till *ex senatus consulto*, p. 136, line 2, nearly all missing in the manuscript of Gaius, restored from the *Collatio*; *Iustinian Inst.* iii. 1, 2, has been in part restored from this passage (xvi. 1-5).

Lines 11-12. *Intestatorum.....pertinent.* Cp. Justinian's Institutes iii. 1, § 1.

Lines 12-22. *Sui.....intellegimus.* Cp. Justinian's Institutes iii. 1, § 2; *Gaius* i. 114 and 115b; ii. 139 and 159; iii. 40; *Ulpian* xxii. 14; xxiii. 3; xxix. 1.

Lines 28-29. *Postumi.....heredes sunt.* Cp. Justinian's Institutes iii. 1, 2 *fin.*, in potestate eius; i.e., immediate power without any intervening ascendant. See above, § 2 in this chapter: *nam si per id tempus quo quis moritur filius in potestate eius sit, nepos ex eo suus heres esse non potest.*

And Moses brought their petition before God.

And the Lord spake unto Moses, saying :

The daughters of Salfad have spoken rightly ; and ye shall therefore give unto them possession of an inheritance in the midst of their father's brothers.

And thou shalt say these things to the children of Israel : If a man die and have no son, ye shall give the inheritance to the nearest of those of his tribe, and he shall possess all his property. And this shall be for the children of Israel a statute of judgments according to that which the Lord has appointed unto Moses.

Gaius, in the Third Book of his Institutes, arranges the order of statutory successions as follows :

Intestate successions devolve by the Law of the Twelve Tables first to self-successors.

Self-successors are children who were in the power of the deceased at the time of his death, such as a son or daughter, a grandson or granddaughter [by a son], a great-grandson or a great-granddaughter by a grandson who was the issue of a son. It makes no difference whether they are children by birth or adoption. The grandson or granddaughter and great-grandson or great-granddaughter will be counted among self-successors, only if the person next before them had ceased to be [in the power of the parent, either through death] or other cause, such as emancipation. For, if a son was in the power of the deceased at the time of his death, a grandson by that son cannot be a self-successor ; and the same rule applies to the rest of a man's descendants in their order.

A wife too, who is in marital power, is the self-successor of the one in whose marital power she is, because she is in the position of a daughter. So likewise, a daughter-in-law who is in a son's marital power, for she is in the position of a granddaughter. She will, however, only be a self-successor if the son, in whose marital power she is, is not himself in his father's power at the latter's decease. The same rule applies to the grandson's wife who is in his marital power, because she is in the position of a great-granddaughter.

Posthumous children, too, who, had they been born in their deceased parent's lifetime would have been in his power, are his self-successors.

The same is the rule with respect to those on whose behalf the

- XVI. 2, 5 Idem iuris est de his, quorum nomine ex lege Aelia Sentia uel ex senatus consulto post mortem patris causa [probatur: nam et hi uiuo patre causa] probata in potestate eius futuri essent.
- 6 [Quod] et de eo filio, qui ex prima secundaue mancipatione post mortem patris manumittitur, intellegemus. 5
- 7 [Igitur] cum filius filiaue et ex altero filio nepotes neptesue extant, pariter ad hereditatem uocantur nec qui gradu propior est, ulteriorem excludit. aequum enim uidetur nepotes neptesue in patris sui locum portionemque succedere. pari ratione et si nepos neptisue sit ex filio et ex nepote pronepos proneptisue, 10 simul uocantur.
- 8 Et quia placebat nepotes neptesue, item pronepotes proneptesue in patris sui locum succedere, conueniens esse uisum est non in capita, sed in stirpes hereditates diuidi, ita ut filius dimidiam partem hereditatis ferat [et] ex altero filio duo pluresue nepotes 15 alteram dimidiam: item si ex duobus filiis nepotes extent, ex altero filio unus forte uel [duo], ex altero tres aut quattuor, [ad unum aut ad duos dimidia pars pertineat et ad tres aut quattuor] altera dimidia.
- 9 De agnatis. si nullus sit suorum heredum, tunc hereditas 20 pertinet ex eadem lege duodecim tabularum ad agnatos.
- 10 Uocantur autem agnati, qui legitima cognatione iuncti sunt. legitima autem cognatio est quae per uirilis sexus personas coniungitur: itaque [qui] eodem patre nati sunt fratres agnati sibi sunt, qui etiam consanguinei uocantur, nec requiritur, an 25 matrem eandem habuerint.
- Item patruus fratris filio et inuicem is illi agnatus est. eodem numero sunt fratres patrueles inter se, id est qui ex duobus fratribus progenerati sunt, quos plerique etiam consobrinos uocant: qua ratione scilicet etiam ad plures gradus agnationis 30 peruenire poterimus. non tamen omnibus simul agnatis dat lex duodecim tabularum hereditatem, sed his, qui tum cum certum est aliquem intestatum decessisse, proximo gradu sunt.
- 12 Nec in eo iure successio est: ideoque si hereditatem proximus omiserit uel antequam hereditatem adierit decesserit, sequentibus 35
- 13 nihil iuris ex lege competit. ideo autem non mortis tempore, quis proximus erit, requirimus, sed eo tempore, quo certum fuerit aliquem intestatum decessisse, quia si quis testamento facto decesserit, melius esse uisum est tunc requiri proximum, cum certum esse coeperit neminem ex [eo] testamento heredem fore. 40

provisions of the Lex Aelia Sentia or the Senatus-consultum have been satisfied by proof of excusable error, which proof has been brought subsequently to the parent's death ; for if the error had been proved during their father's lifetime, they would have been in his power.

The same rule applies to a son who, after having undergone a first or second mancipation, is manumitted after his father's death.

Accordingly, when there are a son or daughter and grandsons or granddaughters by another son, they are called to the succession simultaneously. And the nearer in degree does not exclude the more remote ; for it seems just, that grandsons or granddaughters should succeed to their father's place and share. Similarly also, a grandson or granddaughter by one son and a great-grandson or great-granddaughter by another grandson are called to the succession simultaneously.

And since it was accepted that grandsons and granddaughters and also great-grandsons and great-granddaughters should succeed to their father's place, it seemed consistent that the succession should be divided, not according to individuals, but according to stems, so that the son should take a moiety and the two or more grandchildren by the other son should share between them the other moiety ; and if there are grandchildren by two sons, one of whom has left one or [two] children, while the other has left three or four children, [the single child or the two children of the one son take one half of the inheritance, and the three or four children of the other son take] the other half.

Of Agnates. If there is no self-successor, the succession, by the same Law of the Twelve Tables, devolves to the agnates.

Agnates are those related through statutory cognation. Statutory cognation is kinship through persons of the male sex ; thus, brothers by the same father are agnates. They are also called blood-relations, and it is not required that they should have the same mother. So, too, a father's consanguineous brother is agnate to his brother's son, and *vice versa*. To the same category belong consanguineous brothers' sons, whom many also style *consobrini*. Further degrees of agnation can be traced in the same way.

The Law of the Twelve Tables does not, however, give the succession to all the agnates simultaneously, but only to those who are of the nearest degree at the moment when it becomes certain that a person has died intestate.

XVI.2,14 quod ad feminas tamen adinet hoc iure aliud in ipsarum hereditatibus capiendis placet, aliud in ceterorum ab his capiendis: nam feminarum hereditates proinde agnationis iure redeunt atque masculorum: nostrae uero hereditates ad feminas ultra consanguineorum gradum non pertinent. itaque soror fratri sororie 5 legitima heres est, amita uero et fratris filia heres esse non potest. sororis autem nobis loco est etiam mater aut nouerca, quae per in manum conuentionem apud patrem nostrum ius filiae nanta 15 est. Si [ei] qui defunctus erit sit frater et alterius fratris filius, sicut ex superioribus intellegitur, frater potior est, quia gradu 10 praecedit: sed alia facta est iuris interpretatio inter suos heredes. 16 quod si defuncti nullus frater extet, sed sint liberi fratrum, ad omnes quidem hereditas pertinet, sed quaesitum est, si dispari numero sint, forte nati ex uno unus uel duo et ex altero tres aut quattuor, utrum in stirpes diuidenda sit hereditas, sicut inter suos 15 heredes iuris est an potius in capita. iamdudum autem placuit in capita diuidendam hereditatem: itaque quotquot erunt ab utraque parte personae, in tot portiones hereditas diuidetur et 17 singuli singulas portiones ferunt. si nullus agnatus sit, eadem lex duodecim tabularum gentiles ad hereditatem uocat. qui sint 20 autem gentiles, primo commentario retulimus et cum illic admonuerimus gentilicium ius in desuetudinem abisse, superuacuum est hoc quoque loco de ea re curiosius tractare.

XVI. 3. 1 Paulus libro sententiarum IIII sub titulo de intestatorum successionibus: 25

Intestati dicuntur, qui testamentum facere non possunt [uel iure fecerunt cum possent] uel ipsi linum ut intestati decederent

c. 3, 1-13. From this passage, Paulus Sent. iv. 8, 1-13 is restored.

Line 4. *Nostrae uero hereditates, i.e.,* left by males.

Lines 4-5. *Consanguineorum gradum, i.e.,* sisters by the same father.

Lines 27 to p. 140, l. 3. For paragraph 1, cp. Justinian's Institutes iii. 1 *pr.*, with its divisions of invalid Wills into *testamentum non iure factum, ruptum, irritum, and destitutum.*

Line 27. *Testamentum facere non possunt, i.e.,* children (males under 14, females under 12), lunatics, and those who have not *commercium*. But there is a distinction between the last class and the first two classes; see *Digest* xxxviii. 16, l. 1, *pr.*: *plane, qui testare non potuit, proprie non est intestatus, puta impubes, furiosus uel cui bonis interdictum est; sed hos quoque pro intestatis accipere debemus.*

Lines 27-28. *Qui testamentum facere non possunt [uel iure non fecerunt cum possent];* Huschke has instead *qui testamentum (fecerunt cum) facere non possent.*

Lines 27-28. [*Uel iure non fecerunt cum possent.*] Cp. Gaius ii., 151, 152; *Digest* xxviii. 4, l. 4; *ibid.* xxxvii., 11, l. 1, § 10; Justinian's Code vi. 23, l. 30.

And in succession by this title, there is no advancement in grade. Accordingly, if the agnate of the nearest degree has declined the succession, or died before acceptance, those in the next degree of agnation do not become entitled under this statute.

Hence, the date for determining who is the nearest agnate is not the moment of death, but the moment when it becomes certain that a person has died intestate; because, when a will had been made, it seemed better to take the nearest agnate at the moment when it becomes sure that there will be no heir under the will.

As regards females, the rules of titles by descent differ according to whether they leave property or take it. For inheritances left by females devolve by the same title of agnation as do those of males. But our inheritance does not devolve to females beyond the degree of blood-relationship. Thus, a sister is a statutory successor to her brother or sister by the same father, but neither a father's sister nor a brother's daughter can be a statutory successor to her nephew or uncle. A mother or a stepmother who, by virtue of being in the marital power of our father, has acquired the status of his daughter, is our quasi-sister.

If the deceased left a brother, and a nephew by another brother, the brother, being nearer in degree, is preferred, as can be learnt from what has been said above. But the rule is different in the case of self-successors.

If the deceased left no surviving brother, but there are children of more than one brother, they are all entitled to the succession. When brothers left an unequal number of children, if, for instance, one brother left one or two children, and another brother three or four, it was a question whether the inheritance is to be divided according to stems, as is the rule in the case of self-successors, or distributed in equal portions among those entitled. It has, however, long been settled that the inheritance is to be divided equally among the individuals entitled; and, therefore, according to the number of individuals descended from either side, into so many portions is the inheritance divided, so that each individual takes an equal share.

If there is no agnate, the above-mentioned Law of the Twelve Tables calls the Gentiles to the succession. Who the Gentiles are, we have stated in the First Book. And as we have there pointed out, the whole system of Gentile succession is obsolete. It is therefore superfluous to discuss the subject here again in detail.

abruperunt uel quorum hereditas repudiata est quibusue condicio
defecerit, nisi iure praetorio [non iure] factum testamentum
XVI. 3, 2 obiecta doli exceptione optinebit. horum quorum testamenta
rumpuntur aut inrita fiunt, ipso quidem iure testati decedunt,
sed per consequentias sublato testamento intestati decedunt. 5
3 intestatorum hereditas lege duodecim tabularum primum suis
heredibus, deinde agnatis et aliquando quoque gentilibus
deferebatur. sane consanguinei, quos lex non adprehenderat,
interpretatione prudentium primum inter agnatos locum
4 acceperunt. sui heredes sunt primo loco filius filia in potestate 10
patris constituti: nec interest, si adoptiui sint an naturales et
secundum legem Iuliam Papiamue quaesiti, modo maneant in
5 potestate. qui sui heredes sunt, ipso iure heredes etiam igno-
rantes constituuntur, ut furiosi aut infantes et peregrinantes:
quibus bonorum possessio nisi propter praetoriam actionem non 15
6 erat necessaria. suis heredibus adeo a morte testatoris rerum
hereditariarum dominium continuatur, ut nec tutoris auctoritas
pupillis nec furiosis curator sit necessarius, nisi forte [ut abs-
tineant, si minus forte] soluendo sit hereditas: quamuis etiam
furiosus, si resipuerit, et pupillus, si adoleuerit, abstinere possint. 20
7 post mortem patris natus uel ad hostibus reuersus aut ex primo

Lines 1-2. *Conditio defecerit*. After these words Huschke adds (*quique capite minuti fuerint*, and says that much besides has fallen out, such as *uel mors cretionisue finis aditionem praeuenerit* (Gaius ii. 144).

Line 7. *Deinde agnatis*. Huschke has *deinde* (*consanguineis*) *et agnatis*, and gives as his reason for supplying *consanguineis*, the word commencing the following sentence, which in the MSS. reads *consanguineis*, and which he thinks dropped out of this place and was substituted for *consanguineos*, the word which he reads in the next sentence after *sane*.

Line 8. *Adprehenderat*. Before this word Huschke supplies *aperte*=explicitly.

Line 9. *Interpretatione prudentium*. See paragraph 20 at the end of the chapter. The *Lex Voconia* contained a provision that a woman could not be instituted heiress to a *classicus*, i.e., one possessed of a 100,000 sesterces and upwards (Gaius ii., § 274). Hence daughters had to be included in a fresh class of *consanguinei*, otherwise they would have been excluded altogether.

Lines 12-13. *Modo maneant in potestate*. This is taken by Huschke as a beginning of the next sentence.

Line 13. *Ipsa iure heredes*. Cp. Justinian's Institutes iii. 1, § 3; *Digest* xxxviii. 16, l. 14; *ibid.* xxviii. 2, l. 63.

Line 15. *Nisi propter praetoriam actionem*. Cp. Gaius iii. 34 *et seq.*

Lines 16-17. *A morte.....continuatur*. Cp. Justinian's Institutes iii., 1, § 3; *Digest* xxviii. 2, l. 11.

Line 18. *Nisi forte*. Cp. *Digest* xxix. 2, l. 11: *impuberibus liberis omni modo abstinendi potestas fit, puberibus autem ita, si ei non immiscuerint*; also *ibid.* l. 57 *pr.*

Lines 18-19. *Nisi forte* [ut abstineant, si minus forte] soluendo sit hereditas. Huschke has instead *nec si forte soluendo (non) sit hereditas*; "and he does not require this authority even, if the estate should prove insolvent."

Paulus, in the Fourth Book of the Sentences, under the title of
 "Succession of Intestates":

Those are said to be intestates who have no capacity to make a will [or, though they had the capacity did not make it in proper form], or themselves cut the cord with the express purpose of dying intestate; likewise, when the inheritance has been declined, or the conditions have failed; except that, where the will has been improperly made, the instituted heir, in conformity with the Praetorian law, will obtain the succession by pleading the *exceptio doli*.

Those whose wills are rescinded, or become null, die legally testate; but, as their wills are void, they become practically intestate.

Under the Law of the Twelve Tables, succession to intestates was first offered to self-successors, then to agnates, and sometimes also to members of the same gens. The statute does not indeed mention brothers and sisters; but the interpretation of the jurists has assigned them the first place among the agnates.

Self-successors are the following: in the first degree, a son or daughter in the father's power; and it makes no difference whether they are children by adoption or birth, and legitimate according to the Lex Julia et Papia, provided that they remain in power.

Self-successors become heirs by law, and even without their cognizance; as, for instance, if they are insane, infants, or abroad. A formal taking possession will not be necessary in their case, unless a Praetorian action is involved.

The ownership of things belonging to the estate passes immediately to the self-successors from the moment of the testator's decease, so much so that a ward does not require his guardian's authorisation nor a lunatic that of his committee; except, possibly for purposes of renunciation, should the estate prove insolvent; though the lunatic on recovery, and the ward on attaining puberty, may in any case renounce the succession.

Anyone born after his father's death, or who, after that event,

PAGE 140, line 20. *Abstinere possint*, i.e. if the guardian of the ward or the committee of the lunatic respectively, had not previously renounced on their behalf.

Line 21 till p. 142, line 3. *Post mortem.....efficiuntur*. Cp. above in this title, chap. 2, §§ 4-6 and Justinian's Institutes, iii. 1, § 4.

secundoue mancipio manumissus cuiusue erroris causa probata
[est], licet non fuerint in potestate, sui tamen patri heredes
XVI. 3, 8 efficiuntur. post filios filias ad intestatorum successionem inter
suos ueniunt nepotes neptes, pronepotes proneptes ac deinde
masculino sexu per filium descendentes, si nullo parentum 5
impedimento ipsi in aui potestate uel proauī familia remanserint :
parentes enim liberis suis, cum quibus in potestate fuerint ipsi,
9 ordine successionis obsistunt. filii, si cum nepotibus ex alio filio
susceptis in familia retinentur, ad intestati patris successionem
cum fratris filiis uocantur : quibus in patris sui partem uenientibus 10
hereditas in stirpes, non in capita diuiditur, ita ut unus filius et
plures nepotes singulos semisses habeant. idemque euenit, si
10 auo ex duobus filiis inpari numero nepotes successerint. ex filia
nepotes sui heredes non sunt : in aui enim materni potestate
11 alienam familiam sequentes ipsa ratione esse non possunt. eo 15
tempore suus heres constituendus est, quo certum est aliquem
intestatum decessisse : quod ex euentu deficientis condicionis et
ortu nepotis, qui uiuo auo post mortem patris [conceptus sit et
12 post mortem aui] natus, finiri potest. quem filius emancipatus
suscepit uel adoptauit, sui heredis locum in aui successione sic 20
ut ipse pater obtinere non potest : [potest] adoptiuus, tamen nec
13 quasi cognatus bonorum possessionem eius petere potest. si sui
heredes non sunt, ad agnatos legitima hereditas pertinebit, inter
quos primum locum consanguinei optinent. agnati autem sunt
cognati uirilis sexus per [uirilem sexum] descendentes, sicut filius 25
14 fratris et patruus et deinceps tota successio. inter agnatos et

c. 3, 14 = *Paulus Sent.* iv. 8, 14.

Lines 3-8. *Post filios.....obsistunt.* Cp. above in this title, chap. 2, § 2.

Lines 8-13. *Filii.....successerint.* Cp. above in this title, chap. 2, §§ 7 and 8.

Lines 15-17. *Eo tempore.....decessisse.* Cp. Justinian's Institutes, iii. 1, §§ 7, 8.

Lines 17-18. *Quod ex euentu deficientis condicionis et ortu nepotis.* The text seems to contemplate two cases requiring the determination of the date when a man is to be regarded as having died intestate : (1) where the condition, subject to which the heir has been appointed under the will, has failed ; (2) where a subsequent birth has rescinded the will. Cp. Gaius ii., § 131 and Poste's Commentary, pp. 224, 225.

Lines 21-22. *Adoptiuus.....petere potest.* Cp. Digest I. 7, l. 23, and *ibid.* xxxviii, 8, l. 1, § 4.

Line 23. *Ad agnatos.* Cp. above in this title chap. 2, §§ 9 and 10.

Line 23. *Pertinebit.* Here the *Vercelli* MS. ends.

Line 26, till page 144, line 2. *Inter agnatos.....comprehenduntur.* Cp. Digest, xxxviii. 10, l. 10, § 4, and *ibid.* xxxviii. 7, l. 5 *pr.*

had returned home from captivity in the enemy's territory, one who was manumitted after the first or second mancipation, or had cause of error shown on his behalf—all these become self-successors, though none of them was in his father's power at the time of his death.

Failing sons or daughters, the self-successors of intestates are grandsons, granddaughters, great-grandsons, great-granddaughters, and remoter descendants in the male line provided that they have remained in their grandfather's power or in their great-grandfather's family, and have no surviving parents to bar their claims; for parents bar the succession of their children with whom they themselves have been in the power of the deceased.

Sons who remain in the family with grandsons begotten of another son, are called with their brother's children to the succession of their intestate father. As the children take their father's portion, the inheritance is divided according to stems, not according to the individuals entitled; and thus the son takes a half of the estate and the grandsons between them take the remaining half. The same principle applies if the self-successors are grandchildren by two sons, in unequal groups.

Grandsons by a daughter are not self-successors; for, as they belong in the male line to another family, they cannot, on that ground, be in their maternal grandfather's power.

The time for determining the self-successor is the moment when it has become certain that a person has died intestate; and this is definitely settled on failure of the condition of the will, or on the birth of a grandson, conceived in his grandfather's lifetime, and born after the death of his (father and subsequently of his) grandfather.

An emancipated son's child, whether begotten or adopted, cannot, any more than his father, obtain the status of a self-successor to his grandfather. An adoptive child cannot even claim Praetorian possession as a cognate.

Failing self-successors, the statutory succession will pass to the agnates; a class in which brothers and sisters occupy the first grade. Agnates are male cognates, tracing their descent through the male line; namely, a brother's son, a father's brother and the whole line of successors worked out on the same principle.

cognatos hoc interest, [quod] in agnatis etiam cognati continentur,
inter cognatos uero agnati non comprehenduntur. et ideo
patruus agnatus est et cognatus, auunculus autem cognatus
XVI. 3, 15 tantummodo est. consanguinei sunt eodem patre nati, licet
diuersis matribus, qui in potestate fuerunt mortis tempore: 5
adoptiuus quoque frater, si non sit emancipatus, et hi qui post
16 mortem patris nati sunt uel causam probauerunt. soror iure
consanguinitatis tam ad fratris quam ad sororis hereditatem
17 admittitur. consanguineis non existentibus agnatis defertur
hereditas, prout quis alterum gradu praecesserit. quod si plures 10
18 eodem gradu consistunt, simul admittuntur. si sint defuncti
fratris et filius et nepos fratre non existente, filius fratris nepoti
19 praefertur. sed si duorum fratrum sint liberi, non in stirpes, sed
in capita hereditas distribuitur, scilicet ut pro numero singulorum
20 uiritim distribuatur hereditas. feminae ad hereditates legitimas 15
ultra consanguineorum successiones non admittuntur: id quod
iure ciuili Voconiana ratione uidetur effectum: ceterum lex
duodecim tabularum sine ulla discretione sexus admittit.

XVI. 4, 1 Ulpianus libro singulari [regularum] sub titulo de legitimis
hereditatibus: 20

Intestatorum ingenuorum hereditates pertinent primum ad
suos heredes, id est liberos qui in potestate sunt ceterosque qui
liberorum loco sunt: si sui heredes non sunt, ad consanguineos,
id est fratres et sorores ex eodem patre: si nec hi sunt,
ad reliquos agnatos [proximos, id est cognatos] uirilis sexus per 25
mares descendentes eiusdem familiae. id enim cautum est lege
duodecim tabularum hac: 'si intestatus moritur, cui suus heres
2 nec escit, agnatus proximus familiam habeto.' si agnatus de-
functi non sit, eadem lex duodecim tabularum gentiles ad heredi-

c. 3, 15-17. *From this passage, Paulus Sent., iv. 8, 15-17 is restored.*

c. 3, 18 = *Paulus Sent., iv. 8, 18.*

c. 3, 19. *From this passage, Paulus Sent., iv. 8, 19 is restored.*

c. 3, 20 = *Paulus Sent., iv. 8, 22.*

c. 4, 1 = *Ulpianus Reg., xxvi. 1.*

c. 4, 2. *From this passage, Ulpianus xxvi. 1a, is restored.*

Lines 4-5. *Consanguinei.....tempore.* Cp. above in this title, chap. 2, § 10.

Lines 7-9. *Soror.....admittitur.* Cp. above, chap. 2, § 14.

Lines 9-11. *Consanguineis.....admittuntur.* Cp. above, chap. 2, § 11, and Justinian's Institutes, iii. 2, § 5.

Lines 13-15. *Sed.....hereditas.* Cp. above, chap. 2, § 16.

Lines 15-18. *Feminae.....admittit.* Cp. above, chap. 2, § 14; Justinian's Institutes, iii. 2, § 3; Gaius, iii. 23, and Ulpian, xxvi. 6.

A distinction between cognates and agnates is, that agnates are necessarily cognates, but cognates need not be agnates. Thus, a father's brother is both an agnate and a cognate, but a mother's brother is a cognate only.

Consanguinei are children of the same father, even if of different mothers, provided they were in their father's power at his decease. Included in this class are an adopted brother who has not been emancipated, posthumous children, and those who have shown "excusable proof of error."

A sister is admitted, by right of consanguinity, to a share in her deceased brother's or sister's estate.

Where there are no brothers or sisters, the succession is offered to agnates in turn according to their degree of relationship to the deceased. If there are several of the same degree, they are admitted together to the succession. If the intestate's brother is deceased, and has left a son and a grandson by another son who is deceased, the brother's son is preferred to the grandson.

But if two brothers of the deceased have left children, the inheritance is divided, not according to stems but according to individuals; that is, the estate is distributed in equal shares among those entitled.

Female relatives beyond the grade of sisters, are not admitted to the statutory succession. This rule seems to have been an application, by the civil law, of the principle of the *Lex Voconia*: The Twelve Tables admit agnates without distinction of sex.

Ulpian, in his Single Book [of Rules], under the title "Of Statutory Succession":

The succession of intestates who belong to a gens devolves first to self-successors, that is children in power and others who stand in the position of children. Failing self-successors, it devolves to consanguineous relatives, that is, brothers and sisters by the same father; failing these, to the remaining [nearest] agnates, [that is, male cognates] of the same family, tracing descent from a common ancestor through the male line. For thus is it laid down in the following law of the Twelve Tables: "If one die intestate and has left no self-successor, let the nearest agnate have his estate."

If the deceased has no agnate, the same law of the Twelve

PAGE 144, line 21. *Ingenuorum*, with Huschke, following Ulpian. Mommsen retains *gentiliciorum* from the MSS., but the chapter does not deal primarily with gentile successions, but only as used in former ages as a last resort. Possibly the rare word *gentilicia* at the end of the chapter unconsciously influenced the scribe in substituting *gentiliciorum* here.

tatem uocat his uerbis: 'si agnatus nec escit, gentiles familiam [habento.' nunc nec ullus est] heres hinc nec gentilicia iura in usu sunt.

XVI. 5, 1 Idem [libro] institutionum . . . [sub titulo de successionibus] ab intestato: 5

Ab intestato quoque hereditas defertur aut per ius ciuile aut per praetoris beneficium: per ius ciuile suis heredibus uel liberis, qui in potestate fuerunt, [qui sunt] filii filiae et deinceps qui in locum defuncti parentis, quia ex eodem nati sunt, succedunt.

XVI. 6, 1 Idem eodem libro: 10

Post suos ab intestato legitimi admittuntur, primum consanguinei. [consanguinei] sunt frater et soror, qui in eiusdem potestate patris fuerunt, etsi ex diuersis matribus nati sunt. consanguineos et adoptio facit et adrogatio [et] causae probatio et in manum conuentio. 15

XVI. 7, 1 Idem eodem libro:

De[ficiantibus] consanguineis legitimi uocantur. hi sunt agnati qui nos per patris cognitionem contingunt uirilis sexus: nam sciendum feminis ultra consanguineas hereditates legitimas 2 non deferri. suis praetor solet emancipatos liberos itemque 20 ciuitate donatos coniungere data bonorum possessione, ita tamen, ut bona si qua propria habent, his qui in potestate manserunt conferant. nam aequissimum putauit neque eos bonis paternis carere per hoc, quod non sunt in potestate neque praecipua bona propria habere, cum partem sint ablaturi suis heredibus. 25

XVI. 8, 1 Idem libro qui supra [sub titulo] de suis heredibus:

Post agnatos praetor uocat cognatos: cognati autem sunt, qui nos per patrem aut matrem contingunt: post cognatos uirum

Line 4. *Institutionum*. Blume and Huschke supply from Pithou's conjecture, after this word *secundo*.

Lines 10-15. Cp. above, in this title, chap. 2, § 9, and chap. 3, §§ 15 and 16.

Lines 20-25. Cp. Gaius iii., §§ 19, 20 and 26; *ibid.* i., § 94; Justinian's Institutes, iii. 1, § 9, and *Digest* xxxvii. 6, l. 1 *pr.*

Line 21. *Data bonorum possessione*. Here the Vienna MS. ends.

Lines 22-23. *Ut bona si qua propria habent, ...conferant*. This refers to *Collatio Bonorum*, the doctrine of hotchpot. See Hunter's "Roman Law," pp. 849 and 850; Huschke explains the passage in a note: *Sî quid superest, deducto aere alieno*: "After paying debts due from the estate they must hand over the balance to the unemancipated children." This is clearly an error.

Line 26. *De suis*. Blume and Huschke add *et legitimis*, as the chapter does not deal exclusively with self-successors.

Lines 27—page 148, line 1. *Post agnatos.....uxorem*. Cp. Gaius iii., § 27, and Justinian's Institutes iii., 2 § 3; *ibid.* iii., 9, § 3.

Tables calls Gentiles of the deceased to the succession in the following terms: "If there is no agnate, let the Gentiles have the estate."

At the present day, this would not constitute a title to succession, Gentile rights being obsolete.

The same jurist, in the [book] of his Institutes, [under the title of Successions] in Intestacy:

An intestate's estate devolves either under the civil law or by the praetor's grace; under the civil law, to self-successors, that is, descendants who were in the power of the deceased; these are a son, daughter, or remoter descendants who take the place of a deceased parent because they are his posterity.

The same jurist, in the same book:

Next to self-successors, statutory heirs are admitted to the succession in intestacy, and first *consanguinei*. *Consanguinei* are a brother and sister who were in the power of the same father, even though born of different mothers. The status of consanguinity is also the result of adoption, adrogation, "proof of error," and marital power.

The same jurist, in the same book:

Failing *consanguinei*, statutory heirs are called to the succession. These are agnates of the male sex, connected with us through paternal relationship; for statutory successions, be it known, do not devolve to female relatives beyond the grade of sisters.

The Praetor gives to emancipated children, and to those upon whom citizenship has been conferred, possession of the property conjointly with the self-successors, but with this proviso, that they bring into hotch-pot any property they have. For, in the opinion of the Praetor, it was but fair that, on the one hand, emancipated children should not be deprived of their father's estate, through not being in power, and on the other, that they should not retain their own property exempt from burdens, seeing that they will now be depriving self-successors of a portion of the estate.

The same jurist, in the same book as above, under the title "Of Self-Successors":

Next to agnates, the Praetor calls cognates. Cognates are those related either through father or mother. Next to cognates, he calls husband and wife.

XVI. 8, 2 et uxorem. et haec, si qui decessit non fuit libertinus uel stirpis libertinae: ceterum si libertinus est uel libertina, patrono eius legitima hereditas patronaeue lege duodecim tabularum defertur.

XVI. 9, 1 Idem eodem libro:

Post familiam patroni uocat praetor patronum et patronam, 5
item liberos et parentes patroni et patronae, deinde uirum et
2 uxorem, mox cognatos patroni et patronae. quod si is qui
decessit liber fuit [nec] ex remancipatione manumissus, lex
quidem duodecim tabularum manumissori legitimam hereditatem
detulit, sed praetor aequitate motus decem personas cognatorum 10
ei praetulit has: patrem matrem, filium filiam, auum auiam,
nepotem neptem, fratrem sororem, ne quis occasione iuris san-
3 guinis necessitudinem uinceret. sed imperator noster in heredi-
tatibus quae ab intestato deferuntur eas solas personas uoluit
admitti, quibus decimae immunitatem ipse tribuit. 15

Lines 1-2. *Et haec.....libertinae.* Cp. Justinian's Code vi. 4, l. 4, § 23.

Lines 5-15. *Post familiam.....tribuit.* Cp. Ulpian, xxviii. 7, and Justinian's Institutes, iii. 9, §§ 3, 5.

Line 8. (Nec) *ex remancipatione manumissus.* Huschke has *ex (mancipatione citra) remancipationem manumissus.* *Citra remancipationem=sine remancipatione.* Schulting has *absque remancipatione.*

Lines 5-13. According to the Praetor's extension of the area of succession, the relatives of the patron succeeded in the following order (*Theoph. J.*, iii. 9, 1):

1. When a freedman or freedwoman died intestate and childless after the death of the patron, then the agnates of the patron succeeded (*tum quem ex familia*).

2. In default of these came the children or parents of the patron (*patronus, patrona*). Theophilus explains this case as follows:—If the children or parents neglected to take as such after the children of the freedman (*unde legitimi*), and the time for asking the *bonorum possessio* had passed, and they had not asked under the immediately preceding head (*tum quem ex familia*), then either the patrons or their children or parents could come in under this second description (*unde liberi patroni patronaeque et parentes eorum*).

3. In default of all these, the cognates of the patron took, the nearer excluding the more remote. (Hunter's Roman Law, p. 869). These rules do not apply to one who was free, e.g., a *filius familias*, who had been mancipated, manumitted and re-mancipated.

These rules only apply when the deceased had not been a freedman or of freedman's stock. In case the deceased was a freedman or freedwoman, the statutory succession devolves, under the Twelve Tables, to the patron or patroness.

The same jurist in the same book :

Next to the patron's family, the Praetor calls the patron and patroness, their children and the patron's and patroness's parents ; then husband and wife, and then the patron's and patroness's cognates.

If the deceased was a freeman but [had not been] manumitted after remancipation, the law of the Twelve Tables offered the statutory succession to the manumitter. But the Praetor, on equitable grounds, gave the preference to the following ten classes of relative : father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, so that no one shall use the law to override the claims of blood relationship.

The Emperor decided to admit to succession in cases of intestacy only those persons to whom he himself accorded the exemption from the succession duty of a tenth of the value of the estate.

PAGE 148, lines 13-15. Caracalla raised the succession duty on testamentary successions and legacies from 5 per cent. (at which it had been fixed by the *Lex Julia de Vicesima hereditatum*, 6 c.E.) to 10 per cent. This *Lex Julia* exempted, however, Roman parents and children from payment of this duty. Nerva extended the exemption to mothers and their children, *etiam si cognationum iura non recepissent*. Trajan freed the *decem personae* and relatives to the sixth degree, and also *peregrini*, if they had *justi liberi* by a Roman citizen. All this applied to testate succession. Caracalla increased the succession duty ; abolished all the immunities mentioned above, except to those he favoured (probably parents and children who had originally been exempted by the *Lex Julia*) ; and entirely abrogated intestate succession, except to this favoured class. The result was that the revenue from the duty paid on succession, under will, was doubled, and, in cases of intestacy, much property became *caducous* (see *Dio Cassius* 77, 9).

Lines 13-15. *Imperator noster.....tribuit*. Mommsen thinks that the MS. is incomplete. I am inclined to believe with Huschke, that this last sentence, stating the Emperor's decision, marks the conclusion of the book.

COMPARISON OF BIBLICAL
TEXTS IN THE COLLATIO,
VULGATE AND ITALIA.

A COMPARISON OF BIBLICAL TEXTS IN THE COLLATIO, VULGATE AND ITALIA.

VULGATE.	COLLATIO.	ITALA.
Num. xxxv. 16, 17.	I., i. 1, 2.	Num. xxxv. 16, 17. Ex Lugdunensi:
16. Si quis ferro percusserit, et mortuus fuerit qui percussus est : reus erit homicidii, et ipse morietur.	Si quis percusserit hominem ferro et occiderit eum, mortem moriatur. si autem manu lapide, quo mori possit, percusserit et mortuus fuerit, homicida est : mortem moriatur.	Si autem ferro percusserit eum et mortuus fuerit, homicida est: morte puniatur homicida. si autem lapide manu percusserit, quo mori possit et mortuus fuerit, homicida est: morte puniatur homicida.
17. Si lapidem iecerit, et ictus occubuerit: similiter punietur.		
Num. xxxv. 20, 21.	I., i. 3, 4.	Num. xxxv. 20, 21. Ex Lugdunensi:
20. Si per odium quis hominem impulerit, uel iecerit quidpiam in eum per insidias:	Si autem per inimitiam impulerit eum uel inmiserit super eum aliquod uas ex insidiis et mortuus fuerit uel per iram percusserit eum manu et mortuus fuerit, mortem moriatur.	Si autem per inimitiam impulerit eum et inmiserit super eum omne uas ex insidia, et mortuus fuerit, uel per iram percusserit eum de manu, et mortuus fuerit, morti moriatur qui percusserit: homicida est: morti puniatur homicida.
21. Aut cum esset inimicus, manu percusserit, et ille mortuus fuerit: percussor, homicidii reus erit. cognatus occisi statim ut inuenerit eum, ingulabit.		
Num. xxxv. 22-25.	I., v. 1-4.	Num. xxxv. 22-25. Ex Lugdunensi:
22. Quodsi fortuito, et absque odio,	Si autem subito non per inimitias inmiserit super eum aliquod uas non insidians uel lapidem, quo moriatur, non per dolum et ceciderit super eum et mortuus fuerit, si autem non inimicus eius fuerit neque quaesierit male facere ei, iudicabitur inter eum qui percussit, et proximum mortui secundum iudicia haec et liberabitur percussorem.	Si autem subito non per inimitiam inmiserit super eum omne uas non ex insidia, uel omnem lapidem, quo moriatur, non per dolum, et occiderit super eum et mortuus fuerit, is autem non inimicus eius fuerit neque quaesierit male facere ei, et iudicabit synagoga inter eum qui percusserit et proximum sanguinis secundum iudicia haec et liberauit synagoga percussorem a proximo sanguinis.
23. et inimitiis quidquam horum fecerit,		
24. et hoc audiente populo fuerit comprobatum, atque inter percussorem et propinquum. sanguinis quaestio uentilata:		
25. liberabitur innocens de ultoris manu, et reducetur per sententiam in urbem, ad quam confugerat, manebitque ibi, donec sacerdos magnus, qui oleo sancto unctus est, moriatur.		

BIBLICAL TEXTS.

VULGATE.	COLLATIO.	ITALA.
Exod. xxi. 18, 19. 18. Si rixati fuerint uiri, et percusserit alter proximum suum lapide uel pugno. Et ille mortuus non fuerit, sed iacuerit in lectulo : 19. Si surrexerit, et ambulauerit foris super baculum suum, innocens erit qui percusserit, ita tamen ut operas eius, et impensas in medicos restituat.	II., i. 1, 2. Si autem contenderint duo uiri et percusserit alter alterum lapide aut pugno et non fuerit mortuus, decubuerit autem in lectulo, et si surgens ambulauerit homo foris in baculo, sine crimine erit ille, qui eum percusserat praeter ac cessationis eius mercedem dabit ei et medico impensas curationis.	Exod. xxi. 18, 19. Ex Lugdunensi. Si autem litigauerint duo uiri et percusserit quis proximum suum lapide aut ligno et non fuerit mortuus, decubuerit autem in lecto, et si surgens ambulauerit homo foris cum baculo, innocens erit ille qui percusserit eum : uerumtamen quod cessauit et medico curam illius dabit.
Exod. xxi. 20, 21. Qui percusserit seruum suum uel ancillam uirga, et mortui fuerint in manibus eius, criminis reus erit. Sin autem uno die uel duobus superuixerit, non subiacebit poenae, quia pecunia illius est.	III., i. 1, 2. Si quis percusserit seruum aut ancillam uirga et mortuus fuerit in manibus eius, iudicio uindicetur. quod si superuixerit die uno aut duobus, non uindicabitur, pretium enim ipsius est.	Exod. xxi. 20, 21. Ex Lugdunensi. Si quis autem percusserit seruum suum aut ancillam suam de fuste, et mortuus fuerit sub manus eius, iudicio uindicetur. Si uero superuixerit die uno uel duobus, non uindicabitur : pretium enim illius est.
		Augustinus Spec. c. 58. Si autem rixabuntur duo uiri et percusserit aliquis ex his proximum suum lapide aut pugno aut ferro et non fuerit mortuus, decubuerit autem in lecto suo, et si exsurrexit homo et ambulauerit cum baculo, innocuus erit qui percussit : tantum quod curationes eius dabit et curationes. si quis autem percusserit seruum suum aut ancillam suam uirga et mortuus fuerit sub manu eius, iudicio uindicetur : si uero superuixerit diem unum uel duos, non uindicabitur, pretium enim eius est.

BIBLICAL TEXTS.

VULGATE.	COLLATIO.	ITALA.
Leuit. xx. 10. Si moechatus quis fuerit cum uxore alterius, et adulterium perpetraverit cum coniuge proximi sui, morte moriantur et moechus et adultera.	IV., i. 1. Quicumque moechatus fuerit mulierem proximi sui, mortem moriatur qui moechatus fuerit et quae moechata fuerit.	Exod. xxi. 21. Augustinus locut. in Exodo II. 99 (3, p. 347D) : Si quis percusserit servum suum aut ancillam suam in uirga. Leuit. xx. 10. Augustinus quaest. in Leuit. III. 83 (3, p. 521B) : Homo quicumque adulteraverit uxorem uiri aut quicumque adulteraverit uxorem proximi sui, morte moriantur.
Deut. xxvii. 21. Maledictus qui dormit cum omni iumento. et dicet omnis populus : Amen.	VI., vii. 9. Maledictus, qui dormierit cum omni pecore.	Deut. xxvii. 21. Augustinus locut. de Jesu Naue. VI. 59 (3, p. 369A) : Maledictus omnis qui dormierit cum omni pecore.
Exod. xxii. 2, 3. 2. Si effringens fur domum sine suffodiens fuerit inuentus, et accepto uulnere mortuus fuerit ; percussor non erit reus sanguinis. 3. Quodsi orto sole hoc fecerit, homicidium perpetravit et ipse morietur. si non habuerit quod pro furto, reddat, ipse uenundabitur.	VII., i. 2. Si perfodiens nocte parietem inuentus fuerit fur et percusserit eum alius et mortuus fuerit hic, non est homicida is qui percusserit eum. Si autem sol ortus fuerit super eum, reus est mortis percussor : et ipse morietur.	Exod. xxii. 2, 3. Augustinus quaest. in Exod. II. 84 (3, p. 449D) : Si autem perfodiens inuentus fuerit fur et percussus mortuus fuerit, non est illi homicidium : si autem orietur sol super eum, reus est : pro morte morietur.

BIBLICAL TEXTS.

VULGATE.	COLLATIO.	ITALA.
Deut. xix. 16, 20. 16. Si steterit testis mendax contra hominem, accusans eum praeuarcationis. 20. Ut audientes ceteri timorem habeant et nequaquam talia audeant facere.	VIII., i. 1-5. Si steterit testis iniustus aduersus hominem accusandum accusans eum impietatis, stabunt duo homines, quibus est inuicem contentio, ante deum et ante sacerdotes et ante iudices, quicumque fuerint in illis diebus. cum inquisierint iudices diligenter et inuentus fuerit testis iniustus testificans iniusta, insurgentes aduersus eum facietis ei, sicut uoluit malefacere et delebitis malum de medio uestrum : et ceteri audientes timebunt nec audebunt haec mala facere inter uos.	Deut. xix. 16, 20. Lucifer de Athanasio, 1. 7 : Si autem steterit testis iniustus aduersus hominem detrahens ei iniquitatem, stabunt duo homines, quibus est ipsis contradictio, ante dominum et ante sacerdotem et in conspectu iudicii quicumque fuerit in diebus illis et interrogabunt diligenter iudices et ecce testis iniustus testificatus est iniqua resistens aduersus fratrem suum et facite ei, quemadmodum nequiter egit facere aduersus fratrem suum et auferes iniquum ex uobis ipsis, et ceteri audientes timebunt et non adponent amplius facere uerbum malignum.
Exod. xx. 16. Non loqueris contra proximum tuum falsum testimonium.	IX., i. 1. Falsum testimonium non dabis aduersus proximum tuum.	Exod. xx. 16. Augustinus Quaest. in Exod. II. 71, 6 (3, p. 415B) : Falsum testimonium non dices aduersus proximum tuum. Lucifer de Athanasio 1, 3. Non falsum testimonium dices aduersus proximum tuum. Augustinus Spec. c. 42. Non dices falsum testimonium aduersus proximum tuum.
Exod. xxii. 7, 8: 7. Si quis commendauerit amico pecuniam, aut uas in custodiam, et ab eo, qui susceperat, furto ablata fuerint: si inuenitur fur, duplum reddet. 8. Si latet fur, dominus domus applicabitur ad deos, et iurabit quod non extenderit manum in rem proximi sui.	X., i. 1. Si aliquis dabit proximo suo argentum aut uas seruare, et furatum fuerit de domo hominis, si inuenitur qui furatus est, reddet duplum, quod si non fuerit inuentus fur, accedet is qui commendatum susceperat ante dominum et iurabit nihil se nequiter egisse de omni re commendata proximi sui et liberabitur.	Exod. xxii. 7, 8. Ex Wirceburgensi. ... fuerit de domo hominis si inuentus fuerit, fur reddet duplum: quod si non fuerit inuentus fur, accedet d(o)m(inu)s domus in conspectu dei et iurabit nihil maligne fecisse ex omni commendato proximi aut de omni re qua accusabitur.

BIBLICAL TEXTS.

VULGATE.

Exod. xxii. 1.

Si quis furatus fuerit bouem aut ouem, et occiderit uel uendiderit :
quinque boues pro uno boue restituet, et quatuor oues pro una oue.

Deut. xviii. 10-14.

10. Nec inueniatur in te qui lustret filium suum, aut filiam ducens per ignem : aut qui ariolos sciscitetur, et obseruet somnia atque auguria, nec sit maleficus.
11. Nec incantator, nec qui pythones consulat, nec diuinos, aut quaerat a mortuis ueritatem.
12. Omnia, enim haec abominatur Dominus, et propter istiusmodi scelera delet eos in introitu tuo.
13. Perfectus eris, et absque macula cum Domino Deo tuo.
14. Gentes istae, quarum possidebis terram, augures et diuinos audiunt : tu autem a Domino Deo tuo aliter institutus es.

COLLATIO.

XI., 1, 1.

Si quis inuolauerit uitulum aut ouem et occiderit aut uendiderit, quinque uitulos restituet pro uitulo uno, quattuor oues pro oue una. quod si non habet unde reddat, uenundetur pro furto.

XV., 1, 1-5.

Non inueniatur in te qui lustret filium tuum aut filiam tuam, nec diuinus apud quem sortes tollas : nec consentias uenenariis impostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. nec intendas prodigia, nec interrogas mortuos. (Non inueniatur in te auguriator nec inspector auium nec maleficus aut incantator nec pythonem habens in uentrem nec haruspex nec interrogator mortuorum nec portenta inspiciens) : omnia namque ista a domino deo tuo damnata sunt et qui fecerit haec. propter has enim abominationes deus eradicabit Chaldaeos a facie tua. tu autem perfectus eris ante dominum deum tuum : Gentes enim istae, quas tu possides, auguria et sortes et diuinationes audiebant.

ITALA.

Exod. xxii. 1.

Augustinus quaest. in Num.

IV. 10 (3, p. 531C) :

In Exodo dicitur si quis furatus fuerit uitulum aut ouem, restituere debere quinque uitulos uel quattuor oues, si occiderit aut uendiderit.

Augustinus spec. c. 74 :

Quod si quis inuolauerit uitulum aut ouem et occiderit eum aut uendiderit, quinque uitulos reddet pro uno uitulo et quattuor oues pro una oue. quod si pauper est et non habet unde reddat, ueniat pro furto.

Deut. xviii. 10-14.

Hieronymus contra Pelag.

I. 36, p. 721 Vall :

Nec inueniatur in te qui traducat filium uel filiam suam per ignem diuinationibus et omnibus (al. uel omnibus) auguriis et maleficis artibus et incantationibus non seruiens, ut interrogas magos et hariolos et mortuos, abominatio enim domini est omnis qui facit haec et propter has abominationes dominus deus tuus consumet eas a facie tua : perfectus eris cum domino deo tuo . . . gentes istae quas tu possidebis hariolos et diuinos audiunt, tibi autem non sic dedit dominus deus tuus.

Augustinus Spec. c. 55 :

Non inuenietur in te lustrans filium suum aut filiam in igne et diuinans diuinationem augurans et aruspicans et medicaminibus infuscans, incantator, uentriloquus et portenta inspiciens et interrogans mortuos : est enim abominandus domino deo tuo et omnis qui facit haec : propter has enim abominationes dominus eradicabit eos a te. tu autem consummatus eris coram domino deo tuo : gentes enim istae quas tu possidebis auguria et diuinationes audiunt, tibi autem non ita dedit dominus deus tuus.

BIBLICAL TEXTS.

VULGATE.	COLLATIO.	ITALA.
Num. xxvii. 2-11.	XVI., 1, 1-8.	Num. xxvii. 2-11. Ex Lugdunensi:
2. Steteruntque coram Moyse et Eleazaro sacerdote, et cunctis principibus populi ad ostium tabernaculi foederis, atque dixerunt: 3. Pater noster mortuus est in deserto, nec fuit in seditione, quae concitata est contra Dominum sub Core, sed in peccato suo mortuus est: hic non habuit mares filios. Cur tollitur nomen illius de familia sua, quia non habuit filium? Date nobis possessionem inter cognatos patris nostri. 4. Retulitque Moyses causam earum ad iudicium Domini. 5. Qui dixit ad eum. 6. Justam rem postulant filiae Salphaad: da eisis possessionem inter cognatos patris sui. 7. Et ei in hereditatem succedant. 8. Ad filios autem Israel loqueris haec. 9. Homo cum mortuus fuerit absque filio, ad filiam eius transibit hereditas. 10. Si filiam non habuerit, habebit successores patres suos. 11. Quodsi et fratres non fuerint, dabitur hereditatem fratribus patris eius. 12. Sin, autem nec patruos habuerit, dabitur hereditas, his, qui ei proximi sunt eritque hoc filiis Israel sanctum lege perpetua. Sicut praecepit Dominus Moysi.	Filiae Salfad adstantes ante Moysen et Eleazarum sacerdotem et principes omnemque senatum filiorum Israhel in foribus tabernaculi testimonii dixerunt: pater noster mortuus est et filii non fuerunt ei, sed filiae, et ideo non deleatur nomen patris nostri de medio tribus suae. non est ei masculus: date nobis possessionem in medio fratrum patris nostri. et obtulit Moyses petitionem earum coram deo. et locutus est dominus Moysi dicens: recte filiae Salphad locutae sunt: et ideo dabitur eis possessionem hereditatis in medio fratrum patris earum. et dices haec filiis Israhel: homo si decesserit et filium non habuerit dabitur hereditatem proximo eorum de tribu eius: et possidebit omnia eius: et erit haec filiis Israhel iustificatio iudiciorum secundum quae constituit dominus Moysi.	Et accesserunt filiae Salpaat et stantes contra Eleazar sacerdotem et contra principes in omnem synagogam ad ostium tabernaculi testimonii dixerunt: pater noster mortuus est in deserto . . . et filii non fuerunt et non deleatur nomen patris nostri de media plebe eius, quia non est filius: date nobis possessionem in medio fratrum patris nostri. et obtulit Moyses iudicium earum contra dominum et locutus est dominus ad Moysen dicens: recte filiae Salpaat locutae sunt: datam dabis eis possessionem hereditatis in medio fratrum patris earum . . . et filiis Israhel loqueris dicens: homo si decesserit et filios non habuerit . . . dabitur hereditatem domestico proximo ipsius de tribu ipsius et possidebit quae sunt ipsius, et erit haec filiis Israhel iustificatio iudiciorum secundum quae constituit dominus Moysi.

ADDITIONAL NOTES (JEWISH LAW).

— 12.70 —
NOTE ON TITLE III. DE SAEVITIA DOMINORUM
(COHIBENDA).

In the treatment of slaves, Jewish Law (Biblical and Talmudical) stood on a higher plane than Roman Law. As we see from the Biblical text at the head of this title, the Hebrew master never had the *jus vitae necisque potestas*. A characteristic feature of the Mosaic Law, not noted in the *Collatio*, is that the infliction by the master of a permanent injury entitled the slave to freedom. "And if a man smite the eye of his servant, or the eye of his maid, that it perish, he shall let him go free for his eye's sake. And if he smite out his manservant's tooth or his maidservant's tooth, he shall let him go free for his tooth's sake" (Exodus xxi. 26-27). The Talmudical Law went still further in favour of the slave. According to the Scriptural text (Exod. xxi. 20-21) the master was not punished, if the slave did not die under his hand but survived for a day or two. According to the Rabbis, this was only so, if the instrument used was not a lethal weapon and the mode of chastisement was not likely to cause death; otherwise the master was liable for murder even if the slave died more than a year after the chastisement. (*Sifri* to the last weekly portion in the book of Numbers; Maimonides' Code, Laws of Murder, chap. ii., paragraph 10.)

According to the Talmud (T. B. Kiddushin 24 b) the slave obtained his freedom if he sustained a permanent injury inflicted by his master even *involuntarily*, e.g., if a physician failed to cure an ocular affection of his slave so that he lost the use of his eye.

Of course, these rules applied, it must be understood, to Gentiles who were acquired by capture in war or by purchase. A Hebrew could not become a slave to a Hebrew, but only a bondman, *liber serviens*, for a definite period—six years or till the year of the Jubilee. A Hebrew might sell his services, or they might be assigned by the Court, in case he was unable to pay the value of what he had stolen (Exodus xxi. 1-6). "He shall serve him for ever" (*ibid.* v. 6) is explained to mean till the year of the Jubilee. The Biblical Law also gave protection to fugitive slaves: their surrender to their owners was forbidden. "Thou shalt not deliver to his master the slave which is escaped

ADDITIONAL NOTES

from his master unto thee. He shall dwell with thee, even among you, in that place which he shall choose, in one of thy gates, where it liketh him best; thou shalt not oppress him" (Deuteronomy xxiii. 15-16).

NOTE ON TITLES VII. AND VIII.

To prove a disputed fact there must be at least two witnesses testifying to the same fact. "By the mouth of two or three witnesses the matter shall be established. It shall not be established by the mouth of one witness." The witnesses must not be blind, deaf, insane, or under the age of puberty (*Baba Bathra* 135*b*). They must not be open transgressors or people of disreputable character, *e.g.*, those who make their livelihood by dicing, usury, pigeon-flying (Mishna, Sanhedrin iii. 3).

Relationship to the parties to the suit, by blood, or (according to the later tradition) even by affinity, is a disqualification (Mishna, Sanhedrin iii. 4). According to the view of the Palestinian Talmud, *in loco*, witnesses must not be related to each other.

NOTE ON TITLE X.—ON DEPOSIT.

Four classes of *Bailees* are enumerated in the Mishna, *Baba Metzia*, vii. 8 and *Shebuoth* viii. 1: gratuitous depositary, paid depositary, hirer, and gratuitous borrower for use. The gratuitous borrower for use is liable for every kind of loss, even that arising from *uis major* (Exod. xxii. 10: "If it die, or be hurt, or driven away"). He is not liable if the destruction of the deposit is due to reasonable use, *e.g.*, if an ox, borrowed for the plough, died from work, provided it was not overworked by the borrower (Talmud, *Baba Metzia*, 96*b*); nor is he liable in any case, if the owner of the animal was with it during the time it was in the borrower's custody (Exod. xxii. 15: "But if the owner thereof be with it, he shall not make it good").

The gratuitous depositary is exempt from all liability, provided he takes an oath that he has not used the deposit or fraudulently made away with it, and it is not in his possession. "Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; and the owner of it shall accept thereof, and he shall not make it good." (Exod. xxii. 11). He is, however, liable if he has not put it in a safe place (*Baba Metzia*, chap. iii. 10).

ON JEWISH LAW.

The paid depositary and the hirer are liable for all losses, except those arising from *vis major*, or the act of God; e.g., an attack by robbers or wild beasts, or fire (*Baba Metzia*, vii. 8).

It is to be noted that the rabbinical exegesis takes Exod. xxii. 10, 11 to refer to a gratuitous depositary; *ibid.* 12, 13 to paid depositary or hirer, and *ibid.* 14-15 to a gratuitous borrower for use.

NOTE ON TITLE XVI.

The order of succession in intestacy is: first, sons (eldest son taking a double portion), their descendants; daughters, their descendants. Failing issue, the father succeeds, then brothers (*Baba Bathra*, viii. 2). Sisters come after brothers and their descendants (*ibid.*). If a son dies in his father's life-time, grandchildren succeed to their father's share in the estate of their grandfather (*B. B. Gemara*, 122b). A man is his mother's heir, the husband is the wife's heir, but the wife is not her husband's heir. She has, however, her dower. Illegitimacy is no bar to inheritance or transmission. Recognition by father is accepted as proof that they are his children (*ibid.* viii. 6). Hotchpot was not recognised in Jewish Jurisprudence (*B. B.*, viii. 8).

SPECIMENS OF ORTHOGRAPHICAL ERRORS IN THE CODICES.

*Those marked * are also in the variants, where others of the same class will be found.*

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
<i>a for e</i>	Page	Line			
	62	19			* <i>abaristi</i>
<i>ae for e</i>	62	15	<i>optimae</i>		
	70	21	<i>iustae</i>		
	70	21	<i>cognoscae</i>		
	108	4			<i>paenis (penes)</i>
	118	20	<i>uidilicaet</i>		
	128	24	* <i>quiaetem</i>		
	130	21	<i>nuperrimae</i>		
<i>e for ae</i>	passim		<i>hec que etatis ad-</i> <i>misse</i>	<i>also frequently</i> <i>in this MS.</i>	<i>also frequently</i> <i>in this MS.</i>
	68	26	<i>cesus</i>		
	78	26	<i>quero</i>		
	82	24	* <i>flamme</i>		* <i>flamme</i>
	62	6	<i>pre for prae, e. g.</i> <i>preuita (praebita)</i>		
	88	31	<i>extimet (aestimet)</i>		
	102	5	<i>questum</i>		
	120	8	<i>queri</i>		
	120	23	<i>mansuete</i>		
	126	23	<i>iste</i>		
<i>e or ae for oe</i>	88	4	<i>obediꝛe</i>	<i>obedire</i> <i>pena</i>	<i>obedire</i>
	92	13			
	94	19			<i>paena</i>
	98	8	<i>penam</i>		<i>penam</i>
	110	24	<i>paena</i>		
<i>e for a</i>	62	17		<i>ietitur (iactatur)</i>	<i>iettitur</i>
<i>e for i</i>	56	21			<i>uendicari</i>
	60	26			<i>prestetit</i>
	66	4	* <i>cederet (sciderit)</i>		
	76	19	<i>treginta</i>		
	84	23			<i>impedet</i>
	86	30	<i>seuerissemæ</i>		

SPECIMENS OF ERRORS IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
	Page	Line			
<i>e for i (cont.)</i>	88	18	preuigna		
	122	22	uindederit (uindi-		
	118	29	derit) *tamen (tam in)	*tamen	*tamen
<i>e for o</i>	118	14	*precessit	*precessit	*precessit
<i>ii for i</i>	passim.		subiicio	subiicio	subiicio
<i>i for e</i>	72	16	dioclítiano		
	76	4			interficerit
	90	5	dirimerint	dirimerint	dirimerint
	102	27		suscíperat	
	124	25	uindiderit		
	118	20	uidilicet		
<i>i for t</i>	86	7		*sancíeque	
<i>o for a</i>	126	21			*obominationes
<i>o for i</i>	116	25	*doceret	*doceret	
<i>o for u</i>	76	8			calomnie
	78	30	poniatur		
	86	25	pecodum	pecodum	
	88	33	anolino		
	108	20	*pretexto	*pretexto	*pretexto
	116	12	ponitionum (puniti in text)		
	116	14	grado		
	120	4	fornum	fornum	
	128	15	contomacium		
	140	18	foriosus		
	128	5			seductos (sed uetus in text)
<i>oe for e</i>	96	11	poenes	} poenes	poenes
	108	4			
	108	8			
	passim.				coep- for cep- (accoeperit, conconceptus suscoepisae, cet,) etc.
<i>oe for o</i>	66	4	*loeris		

SPECIMENS OF 'ERRORS' IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
<i>oe</i> for <i>u</i>	Page	Line			
	122	7		*inpoenae	
<i>u</i> for <i>o</i>	56	7	sacerdus		humicidam
	78	21			humicida
	78	30			
	120	4	cummunem		
	122	18, 19	fortuitu	fortuitu	
	126	17	*auguriatur		
	126	19	interrogatur		
	134	13	nepus		
	140	2			{ praeturi (prae- torio, praeto- riam)
	140	15			
<i>ui</i> for <i>i</i>	74	4	*domui		
<i>Redundant</i>					
<i>ε or added</i>					
<i>Consonants.</i>					
<i>C</i>	58	28		instrinxit	
	88	24		deuinxit	deuinxit
	118	17	*uecturiae		
	124	24		*uincxerit	
	128	8	*sic		
	60	17	siccariis		
	130	4		affricae	
<i>f</i>	passim				necgleg
<i>g</i>	82	17		aggrestit	
	86	22			
<i>h</i>	86	25	} hac	hac	hac
	86	27			
	108	11			
	78	8	nechisque		
			(necisque)		
	82	14	archadius	archadius	archadius
	86	32		antehactum	
	100	5, 6	cohierit	cohierit	cohierit

SPECIMENS OF ERRORS IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
<i>h</i> (cont.)	Page	Line			
	92	19			
	102	26	<i>his</i>	<i>his</i>	<i>his</i>
	104	23			
	106	17			
	108	1			
	106	9	<i>hortum</i>		
	106	9	<i>hordinem</i>		
	122	4			
	110	18			
	114	24	<i>habigunt</i>		
	116	4	<i>hareas</i>		
	134	28	<i>holiuarum</i>		
<i>l</i>	passim.			<i>posthumi</i>	
	frequently		<i>coherc-</i>	<i>adhire</i>	
	92	15	<i>*tello</i>	<i>coherc-</i>	<i>coherc-</i>
<i>m</i>	118	14	<i>*legit</i>	<i>*legit</i>	<i>*legit</i>
	114	1	<i>consummi</i>	<i>consummi</i>	
<i>n</i>	64	23		<i>mannumittere</i>	
<i>p</i>	58	27			<i>dampnatur</i>
<i>r</i>	126	3	<i>*uendidedrit</i>		
	128	31	<i>*renuntiant</i>		
<i>s</i>	134	22	<i>*manus</i>		
	138	13	<i>exstet</i>		
	146	9		<i>succesdunt</i>	
	64	12	<i>*fortis</i>		
	112	17		<i>betticae</i>	<i>betticae</i>
<i>x</i>	64	17			<i>exstimare</i>
<i>Omitted Consonants.</i>					
<i>c</i>	68	13	<i>*conple..ti</i>		
	68	20	<i>*ne..qua</i>		
<i>d</i>	108	13	<i>*a..misso</i>		
<i>f</i>	86	22	<i>*a..fectos</i>		

SPECIMENS OF ERRORS IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
	Page	Line			
<i>f</i>	94	22	ef..ractores	ef..ractores	
<i>h</i>	60	27	per..orrescat		per..orrescat
	60	27			contra..itur
	70	19			detra..i
	82	25			..ospitium
	86	33		..actenus	..actenus
	<i>always</i>		..adrianus		
	106	1	*..ermogenianus		*...orreorum
	108	26			*pit..onem
	126	18	*pit..onem		
<i>l</i>	98	8	*inf..igit		*inf..igit
<i>m</i>	102	28	com..endata		
	138	22	*com..entario		
<i>r</i>	82	17	*ag..este		
	90	12	er..orem		
	120	22	*euenire	*eueniri	*euenire
<i>s</i>	<i>passim</i>		exusit exuserit	exusit exuserit	
	72	23	*eduxerit		
	86	7	*con..titute		
	122	28	*tran..lata		
	138	11	..uperioribus		
	64	23	manumit..ere		
	80	17	*liber..os		
	116	22	remit..enda		
<i>b for d</i>	90	21	*abstipulantibus	*abstipulantibus	*abstipulantibus
<i>b for p</i>	118	16	*babuli		
	60	19		obtulerit	
<i>b for u</i>	60	17	*beneficiis	*beneficis	*beneficiis
	62	17			ebaristi
	70	2	sebitia		
	70	13			sebitia
	78	22	seruabit		seruabit
	88	16	abia		
	88	23	fabore		
	102	10		bytricus	
	114	13	*berbicem	*berbicem	*berbicem
	128	27			dibus
	144	3	abunculus		
	134	16	adoptibi		

SPECIMENS OF ERRORS IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
	Page	Line			
<i>c</i> for <i>e</i>	128	5		*seductus (sed uetus)	*seductos
<i>c</i> for <i>g</i>	78	28	*ambicatur	*ambicatur	*ambicatur
	82	17			*acreste
	126	7		placiatore	
<i>c</i> for <i>h</i>	126	19	*caruspex		
<i>c</i> for <i>n</i>	94	18	*coctornique		
<i>c</i> for <i>qu</i>	106	14	*cominus	*cominus	*cominus
	116	14		*alico	
<i>c</i> for <i>t</i>	100	7	*cocta	*cocta	
<i>ci</i> for <i>ti</i>	80	19	inpacientia		
	84	12	tercio		
	92	17	leccio		
	96	7	} accione		
	96	8			
	104	9	} accionem		
	116	27			
	128	12	noticiam		
	132	4	contenciosos		
	138	11	pocior		
	138	17	pocius		
<i>d</i> for <i>c</i>	132	1	*ad		
<i>d</i> for <i>cl</i>	62	15		*daudium	
<i>d</i> for <i>t</i>	passim		adque	adque	adque
	72	30			capud
	68	8	} inquit	inquit	inquit
	90	24			
	104	18	ad		
	114	16	adtamen	adtamen	
	138	18	quod quod		
<i>d</i> for <i>u</i>	130	18	*deterioribus		
<i>f</i> for <i>d</i>	88	14		affinium	affinium
	100	10		afficitur	
<i>f</i> for <i>r</i>	88	32	*infuere		

SPECIMENS OF ERRORS IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
	Page	Line			
<i>f</i> for <i>s</i>	130	22			*perfida (Persica)
<i>g</i> for <i>c</i>	60	5		*adfigi	*adfigi
	88	8	*negante (necante)		
<i>h</i> for <i>d</i>	128	10		*huiusmohi	
	102	25		homo	
<i>i</i> for <i>g</i>	124	26		*ingungitur	
<i>m</i> for <i>n</i>	72	10		compellere	
<i>n</i> for <i>r</i>	106	9		natione	
<i>n</i> for <i>rt</i>	98	21	*deponantur (deportantur)	*deponantur	*deponantur
<i>n</i> for <i>s</i>	88	20		*nancum	*nancum
<i>n</i> for <i>ss</i>	66	7		*cenat	*cenat
<i>n</i> for <i>u</i>	128	6		canetur	canetur
<i>n</i> for <i>m</i>	72	7	*inparente (inparem te)		
<i>p</i> for <i>b</i>	136	29	*consoprinus		
<i>p</i> for <i>c</i>	108	9	*direptam	*direptam	direptam
<i>p</i> for <i>d</i>	94	10		appraehendere	appraehendere
<i>p</i> for <i>u</i>	114	3	*interpalam (interuallum)	*interpella	*interpella
<i>ph</i> for <i>f</i>	always			nephas nepharius	
<i>qu</i> for <i>c</i>	62	20	quohercendum		
	64	23			quogendus
	72	28	quohercendis		
	86	10			quohibenda

SPECIMENS OF ERRORS IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
	Page	Line			
<i>qu</i> for <i>c</i> (contd.)	86	11		<i>*que</i> ortatur (cohortatur)	
	88	11		<i>*quo</i> nobis (conubiis)	<i>*quo</i> nobis
	104	3		<i>quo</i> modati	
	122	19	<i>*quo</i> herceri		
<i>qu</i> for <i>f</i>	66	21		<i>*quid</i> (fit)	
<i>r</i> for <i>s</i>	68	4, 5	<i>*re</i> xteriorum (sestertiorum)		
	76	19		<i>*re</i> stersiorum	
	82	18		<i>*re</i> gulis (saeculis)	
<i>r</i> for <i>st</i>	86	20		<i>*honer</i> ate	
<i>r</i> for <i>s</i>	88	29		<i>*re</i> ueritatem	<i>*re</i> ueritatem
	104	25		<i>*re</i> mper	<i>*re</i> mper
	118	17		<i>*artili</i> ae	
<i>s</i> for <i>g</i>	112	8		abiseis	
<i>s</i> for <i>n</i>	122	27	<i>*sum</i> maria	<i>*sum</i> maria	<i>*sum</i> maria
<i>s</i> for <i>r</i>	104	7		<i>*ue</i> stitur	<i>*ue</i> stitur
<i>ss</i> for <i>r</i>	88	4		<i>*obediss</i> (a)e	<i>*obediss</i> (a)e
<i>s</i> for <i>t</i>	126	22	<i>*sua</i>		<i>*sua</i>
<i>s</i> for <i>d</i>	<i>always</i>		<i>aput</i>		
	106	23	quatratille		
	112	6			
	138	1		} <i>aliut</i>	
<i>s</i> for <i>i</i>	64	8	inturia		
<i>s</i> for <i>l</i>	78	31	exitium		
<i>i</i> for <i>ci</i>	passim		prouintia		
	58	9	conditionis	conditionis	conditionis
	62	7	suspitione		
	66	22	conuitium		
	80	6	translatitiae		
	104	3	iuditio		
	114	27	inimitiarum		
	114	32	sartiatur		
<i>i</i> for <i>cti</i>	130	16	pertinatia		
	76	1		iurisditio	

SPECIMENS OF ERRORS IN THE CODICES.

Class of Error.	Reference.		Berlin.	Vienna.	Vercelli.
	Page	Line			
<i>u</i> for <i>a</i>	126	24	* <i>uuguria</i>		
<i>u</i> for <i>b</i>	60	20		<i>pronauerit</i>	
	62	6	<i>preuita</i>		<i>preuitis</i>
	72	4	<i>preuitis</i>		
	76	16	<i>conuio</i>		
	82	24		* <i>expiauit</i>	* <i>expiauit</i>
	86	5	<i>nonilissimorum</i>		<i>nonilissimorum</i>
	104	17	} <i>ciuariarum</i>		* <i>ciuariarum</i>
	104	18			
	104	18	<i>inproue</i>		<i>inproue</i>
	118	15	<i>conprouata</i>		
	120	13		<i>saninum</i>	
	130	12	<i>promarentur</i>		
<i>u</i> for <i>r</i>	140	4	* <i>inuita</i>	* <i>inuita</i>	* <i>inuita</i>
<i>x</i> for <i>c</i>	58	27	* <i>ex quo</i>	* <i>ex quo</i>	* <i>exquo</i>
<i>x</i> for <i>s</i>	64	17	<i>extimatur</i>		<i>extimatur</i>
	76	19	* <i>sextertiorum</i>		* <i>sextertiorum</i>
	80	5	* <i>lex et (laesae)</i>		
	88	30	<i>extimet</i>		
<i>y</i> for <i>i</i>	138	16	<i>styrpes</i>		
	104	17		* <i>cybariarum</i>	
	102	10		<i>bytricus</i>	

TEXTUAL VARIANTS.

ABBREVIATIONS.

a, *b*. Where added to Readings, *a* refers to the scribe's earlier, *b*, to his later reading.

1, 2. Where added, 1 refers to the scribe's reading, 2, to the correction by a later hand.

Bas	= Basilica.*	Hus.	= Huschke.
Beauv. Cod.	= Beauvais Codex (Bellovacensis).	Just. C.	= Justinian's Code.
Char.	= Charondas.	Lach.	= Lachmann.
Digest. V.	= Digestum Versio Vulgata.	Mom.	= Mommsen.
Flor.	= Codex Florentinus.	Paul.	= Pauli Sententiae.
Hal.	= lectio Haloandrina,†	Putean.	= Puteanus.
		Schult.	= Schulting.
		Theod. Cod.	= Theodosian Code.

*The Basilica, a Greek version of the Justinian Collections, with omission of redundances and additions, compiled by Basil and his son, Leo the Philosopher, at the end of the 9th and beginning of the 10th centuries.

†*Lectio Norica* or *Haloandrina* is a mixed text due to Gregorius Haloander (Metzler), the result of a collation of the Florentine with some of the oldest Vulgate MSS., aided largely by arbitrary conjecture, which was published by him at Nuremburg in 1529.

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 56.				
3. Liber primus	<i>omitted</i>		<i>omitted</i>	
7. Moyses haec	hac	idem moyses	hac	
8. hominem mortem			homine morte	
9. si manu lapide quo	sin lapidem	manum lapidem quod	lapidem	
10. mortem			morte	
12. iram manu	manum	manum	ira	
13. mortem			morte	
14. Paulus titulo		<i>omitted</i>		
15. ueneficis	beneficis	beneficis	beneficiis	
17. eiusque causa ue cum et qui	causam	dum	causam uel dum	eius uel (<i>Paul. MSS.</i>) quiue (<i>Huschke</i>)
18. causa uendiderit		et uendiderit	causas	
19. falsumue quo quis periret, mortisue causam	falsumuae perisset mortis suae	quos qui mortisue	(a) falsum uel mortis suae	falsum (<i>Paul. MSS.</i>) causas (<i>Paul. MSS.</i>)
20. quae poena		poenam	paenam	ob quae (<i>Paul. MSS.</i>)
21. aut in				aut (<i>Paul. MSS.</i>)
22. subiciuntur				obiciuntur (<i>Paul. MSS.</i>)
23. Ulpianus libro VII proconsulis	proconsuli (<i>index</i>)		ulpiani (<i>mar- gin</i>)	
24. ueneficis		beneficis	beneficiis	
25. primo is	primum his	primae his qui	his qui	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli,	Other Readings.
PAGE 56— <i>cont.</i>				
26. iudexue questionis cui sorte	iudexuae cui sortem	iudex uel questiones <i>omitted</i> romae	iudex uel cui sorte	
27. Roma propiusue passus factum	propriis factus	proprios passuum	proprius factūs (<i>sic</i>)	propiusue (<i>Schulting</i>)
PAGE 58.				
1. uti quaerat qui ei lege sorte obuenerint	utique erat cui legem sortem	ea sortem obuenerit	obuenerit homines negandi	
2. hominis ne- candi				
3. causa hominemue cuiusue dolo	hominemuae cuius dolum	hominem uel	causam hominem uel	
4. erit	fuerit			
5. Relatis uerbis legis	Relatis uerbis legi (<i>text</i>) legis (<i>index</i>)		} <i>omitted</i>	
modo ipse loquitur	modo ipsi loquitur		} <i>omitted</i>	
5-6. Ulpianus... omnem		Ulpianus <i>omit- ted</i>	(b) Ulpianus ... omnem (<i>all be- tween omit- ted</i> ; (a) <i>pro- bably omits all</i>	
6. qui cum			quicūq̄ cū (<i>ac- cording to Blume</i>)	
7. necandi causa	causam	causam	negandi causam	
8. coercet	coerci	coherci	(a) coerci *** in hac (rest om.) (b) coercere ei in hac	coercere (<i>Blume</i>)
conpescit item eum qui hominem occidit nec	conpesci i. e. q. h. occi- dit coercit nec	compescit i. e. q. h. occi- dit coherciti in haec		
9. adiecit ut et	aiecit		ut pertineret idem	adicit (<i>Hus.</i>)
10. pertinere	pertinet ire	pertinere		
11. item libro qui supra titulo	quod supra titui (<i>index</i>)	liber quod supra titulus	quod supra	
12. mortisue	mortis suae		(a) mortis suae	
13. causam			causa	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli,	Other Readings.
PAGE 58— <i>cont.</i>				
14. de casualibus	item (<i>idem, index</i>) de casualibus	item de causalibus	item de causalibus	
homicidis		homicidiis		
16. subito inimicitias	<i>omitted</i>	inimicitiiis		
17. insidians	insidiant	insidiauerit	insidiaris	
18. et mortuus	mortuus			
18-19. non inimicus eius fuerit	{ inimicus eius			
19. iudicabitis			iudicabitis et	
20. et proximum		et proximum et		
21. et		<i>omitted</i>	<i>omitted</i>	
22. relati	relato			
24. et qui	et qui (<i>index</i>), set qui (<i>text</i>), <i>according to Scaliger; now obliterated</i>	et qui	et qui	
25. occidit sed occidendi	cađ (<i>index</i>)	occidenti	occidenti	scilicet (<i>Pith., Hus.</i>)
26. admisit homicida		amisit homicidam	amisit	
27. e re ecquo	et re ex quo	et re ex quo	trem ex quo	ecquo (<i>Mom.</i>)
28. epafroditus gladium	ipsa funditus	ipsa fronditus	ipsafroditus gladius	epafroditus (<i>Blume</i>)
PAGE 60.				
1. quin occidendi si clauē	qui non sic lapidem	qui non occidend. (<i>sic</i>)	qui non si lapis	si clauē (<i>Digest</i>)
2. percussit aut cucuma aut cum forte rixaretur ferro percussit		<i>omitted</i>	p. aut (<i>cuc. omitted</i>) aut cum f. rix. ferro percusserit	second aut (<i>omitted in Digest, Hus.</i>)
3. occidendi mente et		occidendo mentem ut		
4. homicidam summo	cum	homicida eo	homicida eum	summo (<i>Mom.</i>)
5. affici	affici	adfigi	adfigi	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 60— <i>cont.</i>				
6. libro et titulo qui	libro tertio quinto quod	liber tertius u. [= quintus] titulus quo	libro tertio quinto quod	libro et (<i>Mom.</i>) <i>To be found in Valli- celli Codex of Canons occiderit (Paul. MSS.)</i>
7-15. qui..... ...relegantur occidit				
8. homicida non	homicidam	(a) homida	<i>omitted</i>	
9. si uellet casu	<i>omitted</i> uelle			qui (<i>Paul. MSS.</i>) id casu (<i>Paul. MSS.</i>)
10. ut punitur is	puniatur his	et puniatur his	puniatur his	punitur (<i>Paul.</i>), punia- tur, <i>the Valli. Codex</i> his, <i>the Valli. Codex</i>
11. [iactu] teli ferierit	teli	teli	teli	iactu teli (<i>Paul.</i>), telo (<i>Valli. Codex</i>) occidit (<i>Paul. MSS.</i>)
12. percussus homo perierit	fuerit	homo percussus fuerit	ferierit	perierit (<i>Paul.</i>), fuerit (<i>Valli.</i>)
ictus quoque ipsos	iocus quoque ipso	botos ipsos quoque	uotus quoque ipsos	iocus (<i>Valli.</i>), ictus (<i>Digest</i>) quoque ipsos (<i>Valli.</i>)
13. unumquem- que ludum			unumqueque lutum	
14. damnantur dimidia parte	damnentur demediam parte	dampnatur dimidiam par- tem		
16. libro IIII [sub titulo] legem	libros (<i>index</i>) IIII lege	liber IIII	IIII	xiiii (<i>Pith., Hus.</i>) sub titulo (<i>added by Mom.</i>)
17. sicariis ueneficis	siccari [is] ([is] <i>now obliterated</i>) beneficiis	beneficis	beneficiis	
18. Aurelio Herculano	herculario	herculario	herculario	(<i>omitted in Just. C.</i>) herculano (<i>Just. C.</i>) (<i>Basil</i>)
19 si se praesidi	si ne presidi	siue presidis	si rem	si se (<i>Just. C.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 60— <i>cont.</i>				
20. cui				qui (<i>Just. C.</i>)
animo		animi		} <i>ἰοῦστος</i> (<i>Just. C.</i>) (<i>Bas.</i>) hominem
iustam	iustam	iusta	iusta	
a se	a re	a re	a re	a se (<i>Just. C.</i>)
percutsam			percutsa	purcussum (<i>Just. C.</i>)
21. esse, remissa	esse remissam	<i>omitted</i>		
poena		poenam	penam	
disciplinam		militare	disciplina	
militarem				
22. proferet	proferret	profert	proferre	proferet (<i>Just. C.</i>), feret (<i>Hus.</i>)
proposita	propositio	propositam	proposita	
prid. kl. febr.	prid. kl. Febru.	} <i>omitted</i>	<i>omitted</i>	II. k. febr. laeto II. et cereali (<i>Just. C.</i>) (<i>Hal.</i>)
laeto bis	letio uis cons			
cons.				
23. titulo et libro	et titulo et libro (<i>index</i>)	titulo (et libro <i>omitted</i>)	libro et titulo	
25. A	<i>omitted</i>	<i>omitted</i>		
Flauio	fauio			
26. quo	quod	<i>omitted</i>	quo	
dolo		dolum		
27. quippe ita		(a.) qu(*)ppe		enim (<i>Just. C.</i>)
si et	et si	si et ita	si et	
28-29. ex	} <i>omitted</i>	ex	<i>omitted</i>	
improuiso		improbis	improuiso	
casu		occasum	c. p. q. f.	
potius quam		p. q. fraudem	accedunt facto	
fraude acci-		a. foto		
dunt fato				
30. prop. . . .		} <i>omitted</i>	<i>omitted</i>	
cons				
PAGE 62.				
1. tale		talem		
2-3. exemplum...	quod si dnm	quod si dnn habe	quod si dnn habe	*exemplum sacrarum lit- terarum. Diocletiani et Maximiani A.A. Aga- tho (<i>Cas.</i>), while others have agathocli or agathodi. <i>Just. C.</i>)
n(obis)	habe agatu kn	gatu kn	agatu kn	

* Mommsen says that his text is uncertain; but as the prescription in Justinian's Code was undoubtedly taken from the Gregorian Code, which was compiled under Diocletian, it is probably correct. The names of the Emperors were not given in the text; at least they could not have been written before dd.nn. E(xemplum) s(acrarum) l(itterarum), the first letters of these words may have been taken for quodsi.

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62— <i>cont.</i>				
3. precum			pre eum	
4. facile homicidium se	humicidium	facilem	facilem humicidium sed	
5. uoluntate sed casu fortuito fecisse calcis ictu	fecisset calcis ictum	uoluntatem fortuito fecisset calcis ictum	casum fecisset ictum	
6. occasio præbita	preuitat	occusu præbuita		
7. omni eum ac suspicionē quod ex admissæ rei	omnium hac	omnium at suspicionem <i>omitted</i> admisserit ei	omium	eum omni (<i>Just. C.</i>) quam (<i>Just. C.</i>)
8. sustinet, adnotatione		sustinere adnotatio	sustine adnotatio	
9. Dat prid. k. Decemb.			{	<i>instead of prid :</i> III or VII (<i>Just. C.</i>)
9-10. Diocletiano Aug. IIII et Maximiano conss.	Diocletiano Aug. IIII. <i>obliterated</i>			Sirmi ipsi A.A. IIII et III cons. (<i>Just. C.</i>) <i>Scaliger emends</i> Dio- cletiano Aug. III
11. libro qui	quod	liber qui	libro <i>omitted</i> quod	quo (<i>Char.</i>)
12. per lasciuam	<i>omitted</i>	lasciuam nim- iam		
13. taurini egnati	taurini egnati	taurini heriati	taurini ergati	taurini egnatii (<i>Char.</i>) ignatii taurini (<i>Di gest</i>)
Baeticae	ueticae	ueticae	uettice	
quinquennium		quinquennio		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62— <i>cont.</i>				
14-15. uerba ... optime			} <i>omitted</i>	
15. consultationis	consultationis (<i>index</i>) consolationis (<i>text</i>)	consultationis		consultationis (<i>Charondas</i>)
habent	habentem	habentem		habent [uellem rescri- bas] (<i>Char.</i>) clodium (<i>Char.</i>)
Claudium	clodium	daudium		
16. imperator, et euaristum	imp. eu**ristum ¹ euaristum ²	imperator euaristum	<i>omitted</i> euaristus	
cognoui Claudius Lupi	cognouit gladius luppi			clodius (<i>Char.</i>)
7. iactatur culpa mari male	lactatur culpam manu mele	ietitur culpam a mario melle	luppi ietitur culpa mari melea	iactatur (<i>Char.</i>) culpa manu marii (<i>Ch.</i>)
8. moreretur		commoretur ¹ commoraretur ²		
9. nullam inimi- citiā cum euaristo ei	nulla inimicitia } cum ebaristi	euaristi	abaristi	cum euaristo ei (<i>Mom.</i>) cum euaristo (<i>Char.</i> , <i>Blume</i>)
fuisse tamen	fuisset nec	fuisset nec	fuisse ne	fuisse tamen (<i>Mom.</i>), fuisse nec (<i>Char.</i>) culpam (<i>Char.</i>)
10. culpa credidi aetatis	culpam crededit	culpa crededit	culpam eatis	
11. emendarentur ideoque Mario Euaristo urbe italia prouincia	prouintia	emendaretur ideoque Mario et euaristo urbe italia	e (<i>all the rest omitted</i>) e prouincia	
12. Baetica quinquen- nium interdixi et decreui ut causa	ueticae iterdixit decreuit et	uetica quinquennio interdixit et decreuit et	uettica interdixit decreui et causam	interdixi (<i>Char.</i>) decreui (<i>Char.</i>) et (<i>Char.</i>)
3. duo milia patri eius		pari		sestertium duo milia (<i>Hus.</i>) After eius Mommsen suggests that some such phrase as quem interfecit has dropped out
euaristus	ebaristus		et baristus	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62— <i>cont.</i>				
23-24. eius fuerat		fuerat eius		
24. u(erba) r(escripti) poenam Mari Euaristi	uel res Kp̄ dēvi uerba rescripti poenam mari ebaristi	uel res uerba rescripti poenae marii et euaristi	uel res uerba rescripti poena mari aebaristi	<i>See note, p. 6, l. 19</i>
25. recte Taurine es refert	recte et taurinae est	 est referat	 est referent	recte egnati taurine (<i>Char.</i>)
26. admittatur an casu	 hanc	amittatur hanc occasio	amittatur hanc occasio	
27. distinctio haec poenam		districtio haec poenam distinctio haec poena (<i>sic</i>)		distinctio haec poenarum (<i>Char.</i>)
 aut iustam	 iustitiam	 autem ante iustitiam	 an iustitiam	iustam (<i>Digest an Blume</i>), iustitiam (<i>Char.</i>)
28. prouocare aut tempera- mentum			 autemperamen- tum	elicere (<i>Digest, before correction</i>), eliger (<i>Digest, after correction</i>)
29. modestinus libro...titulo		modestinus lib- rum titulo	modestinus ... (<i>titulo omitted</i>)	
30. generaliter loquitur		(a) loquitur aliter		
31. delinquen- tibus ciuilis	 ciuili	delinquentium ciuiles		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62— <i>cont.</i>				
32. uenia facti	pacto	ueniam facto	facto	
32-33. quae scilicet	qui scilicet	qui scilicet	quis licet	
33. consilio praestari		consilium praestare		
PAGE 64.				
1. addita distinctione	distinctionem	additam distinctionem		
1-2. sciente an ignorante	sciente ad ignorante		(a) scientiae an ignorantiae	
2. aliquo			aliquod	
3. libro et titulo qui	quod	liber et titulum quod	quod	
4. tutandae salutis causa gerit uideatur hominis	ageret uideatur	tutat de gerit uideatur	tuta de causam gerit uideatur homines	salutis suae (<i>Digest</i>) gerunt (<i>Digest</i>) uidentur (<i>Digest</i>)
5. causa appellatione	appellationem	causam appellationem	appellationem	
6. omne	omnem	omni		
8. iniuria	inturia			
10. contenderint alter		unus	contenderit	
11. lapide decubuerit autem		lapidem et decubuerit		
12. foris	fortis	fortis	fortis	<i>Pith. in accordance with the Greek ver- sion, foris baculo suo (Hus.)</i>
baculo accessionis	acessionis	acessionis	baculo suo (?) accessationes	
14. ei curationis	aea	curationes		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 64— <i>cont.</i>				
15. U. libro singulari regularum sub titulo iniuriis	U. libro regularis sub titulo (<i>text</i>) libro regulari sub titulo (<i>index</i>) iuriis (<i>index</i>)	U. lib singulorum de sub titulo	} <i>omitted</i>	
16. iniuria grauis, non est iudicis	grauī rerum non	iniurias grauis est non iudici		iniuriam (<i>Hus.</i>) grauis non est (<i>Mom.</i>)
18. idque colligi ex uerberatus uel quis	adque (<i>a</i>) collegi (<i>b</i>) colligi <i>omitted</i>	collegit et aut	colligit uerberatur	
20-21. Papinianus libro definitionum secundo sub titulo de iudicatis	papianus l. def. definitiorum (<i>index</i>) sec. sub tit.	papianus l. def. secundo sub titulo	Pap. l. def. (secundo sub titulo <i>omitted</i>) de iudicatis personis	
22. hominem liberum noxae deditum	noxiae deditum	hominem liberorum mox ad editum	hominum liberorum mox editum	
23. quantum damni dedit	damnum	quanti dedito		
24. praetore noxae deditum iudicio	noxae taeditum	praetutore et noxae deditum	pretor et noxa aeditum iudici	
PAGE 66.				
1. ulpianus libro XVIII ad edictum sub titulo		tituli	} <i>omitted</i>	XVIII in <i>Digest</i> (correctly)
2. iniuria et cum diceret	iniuriam et cum diceret	iniuriam et cum dicere		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 66— <i>cont.</i>				
3. qui		qui autem		
4. uel loris pugnis caedit	uel loeris cedit	uel oriens pignus occidit	uel oriens occidit	cecidit (<i>Digest</i>); ceciderit <i>required by the construction</i>
4-5. uel telo quoue alio uis genere sciderit hominis	uel telo cum alio uis genere ce- deret hominis	uel telo cum alio uis genere oc- ciderit hominis	uel telocum alio bis genere oc- ciderit hominis	uel.....hominis (<i>Lach.</i>) uel telo uel quo alio, ut scinderet alicui (<i>Digest</i>)
5. uel tumorem sed damnum	uel	uultumore uel si	uel	sed (<i>Digest</i>) d. iniuria (<i>Digest</i>)
6. ceterum si in nullo uiliorem	et cetero	cetero sin	cetero (a) nulco uiliorum	si (<i>Digest</i>)
6-7. deterioremeue			(a) deterio rem uel	
aquila	ad aquiliam	(b) ad aquilia (a) attaquilia	ad aquilia	
cessat		(a) cenatorcenat (b) cenasorcenat	cenat	
erit		rit		
8. pretio deterior factus seruus uerum			pretium deterio	
		uerunt	uero	seruus factus (<i>Digest</i>)
9. salutem sanitatem nec uideri	salute sanitate uideri	alte sanite uideri	salte sanite uideri	nec omitted (<i>Digest</i>) uidetur (<i>Editors</i>)
10. damni aquilia lege				damnum datum atque ideoque lege aquilia (<i>Digest</i>)
[agi]	omitted	omitted	omitted	agi (<i>Digest</i>).
11. libro singulari et titulo	liber (<i>text</i>)	singulorum tituli		
12. dicitur iniuria	iniuriam	dscitur (<i>sic</i>)	dicit	
13. alia est	alia est	alia est	alia est	alias (<i>Inst.</i>); and so in next line alias (<i>Inst.</i>)
13-15. ὁ βρω Graeci	omitted	omitted	omitted	supplied from a similar passage <i>Just. Inst.</i> iv. 4. pr.

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 66— <i>cont.</i>				
15-16. ἀδικία uocant	adician uocant	adicent	adicent	
16. praetor non iure aduersum	noster aduersum	praeter noster aduersus	noster (a) aduersus (b) aduersum	non iure (<i>Inst.</i>)
pronuntiat	pronuntiaret	praenuntiat		
17. non	nos	nos	nos	
18. Labeo ὑβρις	hybrin	libet imbrim	labet ibrin	
19. commune omnibus iniuriis	commune m omnibus enim iuris	commune m omnibus enim iuris	commune m omnibus enim iuris	commune omnibus iniuriis (<i>Lach.</i>). <i>He</i> <i>adds after mores in</i> <i>the next line aliquid.</i> <i>Mom. thinks this</i> <i>addition unneces-</i> <i>sary.</i>
20. feri edictum		ferit edictam	ferit	
21. eam fit fit		fit quid	ea	
22. inuria caedimur uerbis	iniuriam credimus	in uerbis		
23. uel dignitas ut matronae	uel patronae	dignitatem uel	(a) c uel uel	ut (<i>Digest</i>)
24. praetextatae abducuntur aut	pr(a)etextote adducuntur	adducuntur ad	pr(a)etextote	praetextato (<i>Hus.</i>)
PAGE 68.				
1. honoraria legitima lege	legem	honerariam legitimam legem		
2. iniuriam et uiginti sestertiorum	ex restertiorum	ex uiginti resitrium	iniuria ex (b) sestertio- rum (a) sextertiorum	
2-3. poenam sub- bito	poena subit	poenam subit	poena subit	poena suntō (<i>Hus.</i>) poenam subitō (<i>Mom.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 68— <i>cont.</i>				
3. generalis fuit			generali fuit	
3-4. fuerunt et speciales uelut illa si os fregit	} <i>omitted</i>	fuerint et speci- ales uelut manifestus fregit	fuerunt et speci- ales uelut manifestos fregit	fuerunt et speciales uelut si os fregit. (<i>Blume</i>); fuerunt et speciales uelut illa manu fustive si os fregit (<i>Lachmann</i> , <i>Savigny Zeitschrift</i> <i>für gesch. Rechts-</i> <i>wiss.</i> 10.311). <i>Momm-</i> <i>sen agrees with</i> <i>Blume</i> , and rejects <i>Lachmann's emen-</i> <i>dation on the ground</i> <i>that the XII. Tables</i> <i>would not descend to</i> <i>the detail manu</i> <i>fustive.</i>
4. ccc [si] C. L.	trecentos <i>omitted</i>	ccc <i>omitted</i> ad	trecentos <i>omitted</i>	3. 223, at si (<i>inserted in</i> <i>Gaius</i>)
4-5. subito sester- tiorum	subitor ex tertiorum	<i>omitted</i>	subitor ex tertiorum	
6. singulari sub titulo		singulorum sub titulo	} <i>omitted</i>	
7. iniuriarum	iniuriam	iniuria	iniuria	
8. iniuriarum agit certum quid	iniuria aget qui	iniuriam c	iniuria qui	
9. iniuriae taxationem non minorem quam		iniuriam taxationum <i>omitted</i>	no minore	non maiorem (<i>Hus.</i>)
10. fuerit			(a) fierit	
11. demonstrat		(a) demonstram		
11-13. neque..... accidisse c. s. u. n. h. a. u. no- mine suo rem designare	neque accidisset c. s. u. n. h. a. u. nominis suo re destinare	} <i>se, the pas-</i> <i>sage omitted</i>	n..... accidisset c. s. u. n. h. a. u nomini suo rem destinare	designare (<i>Pith. on</i> <i>Dig.</i> 47, 10, 7 <i>pr.</i> 1)
13. conplecti	conpleti	conpleti	conpleti	
14. autem an		aut		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 68— <i>cont.</i>				
14. cognitio		cogitio		
15. est demonstrat	demonstrata	demonstrata	<i>omitted</i> demonstrata	
16. agentis	ageretis	ageritis	ageritis	
17. se siue uer- beratum et demonstrat	<i>worn away</i>	si sit uerberatus ei	si (<i>a sibi</i>) sit uerberatus	se uel uerberatum (<i>Hus.</i>) demonstret (<i>Editors</i>)
18. in modum puta lapide formula	puto lapidem	in modo puto lapidem	immodum puto formulam	
19. proposita quod auli ageri mala pugno percutsa est	posita qu. auli agerii pugno mola p. e.	proposita } <i>omitted</i>	proposita qu. au. ag. pugno mola per. est.	quod a. a. pugno mala (<i>Pith.</i>); quod aulc agerio a numero negi- dio pugno mala per- cussa est. (<i>Hus.</i>) mala pugno (<i>Mom.</i>).
20. cogitur dicere sinistra nec qua manu percutsa sit	diceret sinistram nequa percussit	 neque manus percussit	 cogetur nequa percussit	 percussa sit (<i>Hus.</i>)
21. item adicere	ita addiceret	ita	ita	
22. infamatus et formula Numerius	 fermula numedius	 <i>omitted</i> in numero	(<i>a</i>) infamatum <i>omitted</i> nomedius	
23. Negidius libellum mis- it	nigidius illum inmisit	nigidio illum inmisit	nigidius illum inmisit	libellum misit (<i>almo-</i> <i>so Vonckius</i>); sillur inmisit (<i>Arnaut</i>) sibulum inmisit (<i>Hus.</i>) finum inmisit (<i>lene</i> <i>Palingenis</i> 1 p. 1113.)
24. paulus libro sententiarum [quinto] sub titulo ad	paulus (paulo <i>index</i>) 1. s. [quinto <i>omit-</i> <i>ted</i>]	paulus liber sent. (quinto <i>omit-</i> <i>ted</i>)	} <i>omitted</i>	
24-25. legem cor- neliam				
25. ueneficis	beneficis	beneficis	ueneficiis	
26. non caesus			no	laesus (<i>Pith.</i>)
27. aliquot diurnae decessit	aliquos diuuternae	 cessit	aliquos	
28. necem		uicem		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 70.				
2. Dominorum				<i>Hus. adds</i> (cohibenda)
4. aut uirga		et uirgam	(a) uirgo (?)	
6. die		de die		
7. paulus libro sententiarum [quinto] s. t.	(quinto omitted)	liber (quinto omitted)	} the whole sentence omitted	
7-8 a.l. corneliam ueneficis	beneficis	beneficis		
10. postulari enim		postulare omitted	beneficiis	
				<i>In order to keep the reading</i> enim, <i>Momm.</i> properly suggests addition after temperari of the phrase sed tamen etsi eum dominus excessit, homicidium non commisit
et				
11. coercionem	quohercitionem	omitted	cohercitionem	
12. ulpianus libro.... titulo		cohercitionem	} omitted	
13. saeuitia	seuitias			
14. seruum inpuccitiam	pudiciciam			seruos (<i>Digest</i>)
14-15. turpemque			(a) turpequi, according to Krüger; (a) turpequu; according to Huel-sen; (b) turpe-quae	
15. uiolationem compellat sint praesidis		uiolentum compellant sunt principis	compellant	
16. diui ad Aurelium proconsulem Baeticae	proconsole beticae	omitted aurelii	omitted	aelium (<i>Digest</i>)
16-17. manifestatur		uettice	bettice	ueticae (<i>Digest</i>)
18. suos seruos	seruos suos			manifestabitur (<i>Digest</i>)
			suo seruos [seruo according to Krüger]; (b) suos seruos inliuata	
inlibatam nec	ne			
19. ne		nec		
20. saeuitiam iniuriam denegetur		seuitia	iniuria	
21. qui eorum	qui si illorum	denegentur		
22. sabini confugerunt si uel	siue	eorum fauini confugerant siue	illorum sauini	eorum (<i>Digest</i>)
			siue	si uel (<i>Digest</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 70— <i>cont.</i>				
23. habitos] est infami iniuria	habiti <i>omitted</i> infamiae iniuriam	abuti <i>omitted</i> infamem iniuriam	abiti	habitos (<i>Digest</i>) infami (<i>Digest</i> , V.)
24. uenire iube ita	ueniri iubet	iube intra		ueniri (<i>Digest</i>) iube ita (<i>Digest</i>); iubeta Flor. and (V.)
potestatem Sabini quod	sauini	potestate	potestate sauini	potestate (<i>Digest</i>) qui (<i>Digest</i>) (<i>correctly</i>)
25. meae admissum			me admissum hoc	hoc admissum (<i>Digest</i> , Vulg.)
26. diuus umbram matronam	diuis (<i>index</i>) matrona nam		diuinus matrona	umbriciam (<i>Digest</i>)
PAGE 72.				
1. in		<i>omitted</i>		
2. tractaret item	tractare item (<i>text</i>) idem (<i>index</i>)	tractauit idem item	tractaret idem	tractasset (<i>Digest</i>)
2-3. diuus p. ad l. a. i. rescrip- sit in haec uerba	d. p. a. l. a. i. r. (in <i>omitted</i>) h. u.	d. p. a. l. a. i. scripsit (in <i>omitted</i>) h. u.	} <i>all omitted</i>	
3-4. imperio sed et moderatione		imperium reddet moderationem		
5. debes	debet		debet	
6. temperate tuos ex facili requirere eos possis ne si	temperare et uos et facili eo possit nisi	tuos et facile <i>omitted</i> possis nisi	et uos et facili eos possit nisi	ex facili (<i>Lachmann</i>) reprimere (<i>Lachmann</i>) ne si (<i>Pithou</i>) inparem te (<i>Pithou</i>)
7. inparem te	in parente	in parentem	(a) in parte (b) in parente inpendis	
inpendiis		inpendus ¹	inpendis	
7-8. atrociore do- minationem	atrociorem do- minationem	atrociorem do- minationem	atrociorem do- minationem	atrociore dominationem
8. saeuitia habeat proconsul u. c.	seuitiam	seuitiam habeas	seuitiam } <i>omitted</i>	saeuitia (<i>Lachmann</i>)
9. contra accidat et auctoritate	se et	accedat auctoritatem	accedat	contra te (<i>Lachmann</i>) sed et (<i>Lachman</i>) after auctoritate, <i>Lach-</i> <i>mann adds te</i>
10. Glabrione et Homullo cons.	grauione et romulo	grauione et romulo cons. x.	grauione et romolo <i>omitted</i>	
11. libro XVIII sub titulo	libro XVIII sub titulo	liber XVIII sub titulo	} <i>omitted</i>	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 72— <i>cont.</i>				
2. <i>impp.</i> Diocletianus et Maximianus Augusti Aurelio Sacrato	<i>impp.</i> dioclicianus e. Max. <i>august</i> au. sac.	<i>impr. pp</i> dioclicianus e. m. (<i>augg. omitted</i>) au. sacrati	} <i>omitted</i>	
3. <i>militi</i> [ui]	<i>mil.</i> <i>omitted</i>	<i>mil.</i> sacrati		<i>omitted</i>
4. <i>fati munus</i> <i>implesse</i>		(<i>a</i>) <i>grauemur</i> (<i>b</i>) <i>fauemur</i>		<i>inplisse</i>
4-15 <i>castigationem</i>				<i>casticationem</i>
5. <i>accusationem</i> <i>innocentiae</i>	<i>causationem</i> <i>innotitiae</i>		(<i>a</i>) <i>innocitiae</i> (<i>b</i>) <i>innotitiae</i>	
6-17 <i>prop. n. D.</i> <i>D. A. III e. A.</i> <i>cons.</i>	<i>prop. prop. n. D.</i> <i>Dioclitianus A.</i> <i>III et Aristone</i> <i>conss. IIII</i>	} <i>omitted</i>	<i>omitted</i>	
10. <i>dixit</i>				<i>dicit</i>
<i>moechatus</i> <i>fuerit</i> <i>mulierem</i> <i>mortem</i>	<i>fieri (Index)</i> <i>cum mulierem</i> (<i>Text</i>); <i>muliere (Index)</i>	<i>cum mulierem</i>	(<i>a.</i>) <i>maeschatus</i> <i>mulierem</i> <i>morte</i>	
12. <i>qui</i> <i>fuerit</i> <i>quae</i> <i>moechata</i>	<i>qui</i> <i>moechatus</i>	<i>que</i> <i>omitted</i> <i>qui</i> (<i>a</i>) <i>moechatus</i>	<i>qui</i>	
13. <i>aliqui</i> <i>seduxerit</i> <i>desponsatam</i> <i>stuprauerit</i>	<i>aliquis</i> <i>aeduxerit</i>	<i>aliquis duxerit</i>	<i>aliquis et duxerit</i> <i>sponsatam</i> (<i>a</i>) <i>struprauerit</i>	
14. <i>dotabit</i> <i>eam</i>	<i>docuit</i>	<i>dotabit</i>	<i>dauit</i> <i>omitted</i>	
15. <i>dare illi</i> <i>inferet</i> <i>in</i>		<i>illi dare</i>	<i>inferret</i>	<i>in omitted by previous Editors.</i>
17. <i>Paulus</i> <i>libro</i> <i>singulari</i> <i>de adulteris</i> <i>sub titulo</i>	<i>Paulus</i> <i>libro</i> <i>singularis</i> <i>de adulteris (text)</i> <i>ulteris (Index)</i> <i>sub titulo</i>	<i>Paulus</i> <i>liber</i> <i>singularem</i> <i>de adulteris</i> <i>sub titulo</i>	} <i>omitted</i> <i>sub titulo de adulteriis</i>	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 72— <i>cont.</i>				
28. interpretatio- nem [legis Iuliae]	interpretationem			legis iuliae added <i>Huschke</i>
adulteris		adulterio	adulteriis	
28-29. coercendis	quohercendis			
29. per ipsa capita ire malui	ipsam capitam maluit	in rem mali	ipsam in re	
30. (Iuliae de adulteris)			iulii	iuliae de adulteri <i>Momm.</i> suggests deletion.
PAGE 74.				
1. obrogat patri	abrogat pater	abrogat	abrogat	obrogat (<i>Scaliger</i>)
2. [si in] filia sua quam	<i>omitted</i> filias suas quas	<i>omitted</i> familias <i>omit-</i> ting sua quam	<i>omitted</i> filias suas quas	
potestate aut ea quae [eo]	potestatem ut <i>omitted</i>	potestatem <i>omitted</i> eam queque <i>omitted</i>	potestatem <i>omitted</i> <i>omitted</i>	aut (<i>Pithou</i>)
3. auctore uiro in manum conuenerit	uero in mano conuenerit		auctorem	
3-4. adulterum		cum in manum uenerit	in mano con- uenerit	
4. domi deprehen- derit	domui deprehenderet	domus depraehendens	adultero domo deprehendant	
issue in	in quem	in quem	in quem	issue in (<i>Momm.</i>), isq in (<i>Schulting</i>)
eam		ea	ea	
5. socerum ut is eum	ut his cum	socer ad hos cum	ad his cum	eum (<i>Pith.</i>)
6. filiam in con- tinenti occi- dat. in sui iuris autem	filiam in conti- nenti occidat inuidia autem	filia in continen- tem occidat inuidia autem	} <i>omitted</i>	filiam in contine occidat in sui in autem (<i>Momm.</i>)
qui		si		
8. marcellus	marcellum (<i>index</i>)			
libro xxxi. digest- orum scribit	libro xxxi. d. scribe (<i>index</i>)	liber..... scribit	libro xxx. indegesto- rum scribet autem de	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 74— <i>cont.</i>				
9. auctoritate [legis]		auctoritatem		legis <i>added by Cujas, cp. line 14, where there is also the phrase legis auctoritate</i>
patrem posse interficere consularem	pater interficeret cons.	pater possit (b)consultum const.	pater const.	
10. uirum uel patronum [sieu] filia adulterum	uerum <i>omitted</i> filiam adulterium	utrum et patronem <i>omitted</i> filiam adulterium	uirum <i>omitted</i> adulterium	si eum (<i>Huschke</i>)
12-13. sed solum ad. h. r. e. et si interuallo filiam interfecerit	interuallum filiam interficerit	<i>omitted</i>	interficerit	
13. tantundem est, nisi perse- cutus illam in- terfecerit :	tantunde est nisi persequa- tur illam in- terfecerit	tandem est nisi persequatur illam et in- terfecerit	<i>omitted</i>	tantundem est nisi per- secutus illam int. (<i>Hus.</i>)
14. continuatione auctoritate fecisse	continuationem auctoritatis fecisset	continuationem auctis	continuationem auctis	
15. idem titulo			<i>omitted</i>	
16. uiro	uero	uero		
17. deprehensa uxore	deprehensam uxorem	deprehensam uxorem	deprehensam uxorem	
18. ergo leges		ego	ego	<i>Momm. would have preferred legem</i>
uiro domi	uero etiam domi	uirum etiam domui	etiam domi eo	domi (<i>Hus.</i>)
19. eum				
20. auctoramento rogatus		auctoramentum rogatum	actoramento	
21. ut bestiis pugnaret		sunt bestias pugnare	besteis	
22. licet interficere deprehensum	licere	licere	licere <i>omitted</i> deprehenso	
23. et tam		etiam		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 74— <i>cont.</i>				
23. ciuem Romanum		(a) romano	ciue	
24. Latinum sed et patris et matris			litinum (a) et matris et matris	<i>Momm. follows Hus</i> <i>in pointing out tha</i> <i>sed et patris.....</i> <i>occidere should com</i> <i>after paternum; an</i> <i>then et tam ciuer</i> <i>Romanum quan</i> <i>Latinum would befo</i> <i>lowed immediatel</i> <i>by the explanatio</i> <i>quo loco et deditici</i> <i>habetur.</i> <i>The clauses sed e</i> <i>patris...occidere an</i> <i>quo loco habetur.</i> <i>are apparently take</i> <i>from a note on Pau</i>
et filii		filiis	filiis	
25. dediticius habetur	deditius haberetur	dempticius		
PAGE 76.				
1. iurisdictio occidit et	(a) ex	iuris ditionis occidi		
2. dimittere quod interficit	dimitteret	qua		interfecit (<i>Scaliger</i>)
3. diuum		quod	dum	<i>Mommсен prefers diuc</i>
Commodum rescripsisse	rescripsisset	quomodum	quomodum rescripsisset	
4. eum qui adulterum poena	p(o)enam*	cum in adulterium	eu	
puniri		puniret	punire	* <i>The Berlin Code</i> <i>clearly has poenam.</i>
5. pepercit si qui inconsulto	eas	si ¹ ei si ² quid (a) inconculiscalo (b) in conculis calculo	perpecit ei	
calore		occulto loco		
6. ducti		reducti		
interfecerunt		interficerent		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 76— <i>cont.</i>				
7. idem Paulus eodem libro singulari et titulo	<i>libro omitted (index)</i>	<i>idem Paulus eodem libro et titulo</i>	<i>omitted</i>	
8. iure mariti potest calumniae	qui iure marti	qui iure matris <i>omitted</i>	qui iure matri (<i>α</i>) causa	
9. poena accusat poena		poenam acuset poenam		
10. tum duos utiles	tantum duo	tantum utilis	tantum	tum (<i>Momm.</i>)
11. expertus alias ut	experitus alia	experitur alios aut	experitur aut	
12. aut infamis Ad	<i>omitted</i>	infamis (aut <i>omitted</i>)	infamis (aut <i>omitted</i>)	
13-14. ut et Papi- nianus libro xv scripsit. Papinianus libro xv responsorum sub titulo	ut et Papianus li- bro xv scripsit kp. DCXXVIII papianus libro xv responsorum sub titulo	ut et Papianinus l. xv responso- rium sub titulis	<i>omitted</i>	
14. Iuliam	iuliani			
16. ciuis [ciuem Romanam] sine sue	sibi	ciuem	ciues me ciuem	ciuem Romanam <i>in- serted by Momm.</i> ciuem uel (<i>Hus.</i>)
17. matrimonio iure	iutre		matrimoni	
18. ei opponetur	ea		opponatur ²	
19. libertinus sestertiorum milium habuit	liberatinus sextertiorum	restersiorum milia	sextertiorum	habeat (<i>Editors and Hus.</i>)
20. propriam persequenti		(<i>α</i>) proprium consequenti		
21. qui supra	<i>obliterated</i>	quod super	quod	quo (<i>Hus.</i>)
22. adulterium iure	adulterum		adulterium iuri	
23. sponsam seuerus rescripserunt		reuersus rescripserit		in sponsam (<i>Editors</i>) (in) sponsam (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 78.				
1. Papinianus singulari de	papianus <i>omitted (index)</i>		papianus singulas	
2. emancipatam	emancipata	emancipatum	mancipatum	
3. possit respondi eam	respondit	respondeo	posse ei	
4. [quae] eo auctore	<i>omitted</i> eum auctorem	<i>omitted</i> auctorem	<i>omitted</i> auctorem	
4-5. in manum		in in manu	in manu	
5. emancipatam	emancipatum		mancipatam	
6. pater prohibetur		patris prohibet		
7. Papinianus eodem libro singulari (et titulo)	papianus e. (1. <i>omitted</i>) s. e. t.	} Papinianus libro et titulus	papianus	
8. lex necisque	nec hisque		ex lex	et titulo should be <i>omitted</i> , as nowhere else, in citing this work, is a title added (Momm.)
9. lege comprehendit	legem comprehendit			
10. uelis	uelle	uelle	uelle	uelis (Hus.)
10-11. nam scire cupio. Respondit		} (a) <i>omitted</i>		
12-13. [sed occidit eam cum adultero iussisse]				sed.....iussisse supplied by Momm. occidit potestatem sed necessitatem imposuisse, supplied by Hus.
13. maiore aequitate	maiozem aequitatem	maiozem aequitatem		maioze aequitate (Hus.)
14. occidisce	occidisset			
16. si quis adulterum	qui adulterium (<i>index</i>)	qui	sic qui	quis Schul.; otherwise delete either qui or e
17. respondit		R.		
18. tenebitur lege cornelia	legem corneliam	tenetur legem corneliam		
19. filia uoluntate casu	filiam	filiam uoluntatem	causu	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 78— <i>cont.</i>				
0. fugit filia	<i>omitted</i> filiam			<i>Hus. omits filia and puts quod forte fugit after casu seruata est, line 19</i>
1. punit	ponit		patrem	
2. pater uoluit, sed quia	uoluisset qui			
4. Idem	papianus idem		<i>omitted</i>	
5. adulterio deprehensam occidit	deprehensum		adulterium occiderit	
6. legem incidat respondit nulla parte	lege incidit	lege R. nullam partem	lege	
7. aperte	a parte			
8. legem fecisse non ambigitur	fecisset non dubitantur non ambicitur	lege non dubitantur non ambigitur	non dubitantur non ambigitur	<i>after permittitur, line 29 the Berlin text has ambigitur sic dicit non dubitantur</i>
9. poena inique honestissimo permittitur non	ponat hisquae honestimo permittetur	poena sin idque <i>omitted</i>	idque	Inique (<i>Od. Mueller</i>) <i>See above, line 28</i>
0. deportatione		deportationem		
1. exilium poena eius statuatur	exitium statuitur	exitum poenas statuitur	exitum statuitur	
PAGE 80.				
1. idem sic	idem si (<i>Index</i>) item sic (<i>Text</i>)	idem si	idem si	
alterutrius marito accusante	alterius maritu (<i>index</i>)	accusantem		
2. est	esse	esse	esse	est (<i>Schulting</i>)
3. respondit potest uideri ea	respondit	R. potes uidere eam	respondit uidere	
5. diligentius laesae	lex et	diligens suum	diligens suum leseō	
6. translatie persequeren- tur		translati et persequentur		
tale		talem		
7. ministerio		misterio		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna,	Vercelli.	Other Readings.
PAGE 80— <i>cont.</i>				
7. est eo perduxit		<i>omitted</i> eum adduxit		
8. ut etiam accusante mancipia		accusantem mancipio	ut etiam ut	
9. a			ad	
10. Paulus libro sententiarum [secundo] sub	Paulus liber sent. (secundo <i>omitted</i>) sub	Paulus libro sent. (secundo <i>omitted</i>) sub	} <i>omitted</i>	
11. permittitur				Before permittitur pat <i>Paul. has capi</i> secundo legis Iuli de adulteriis
[patri] quam naturali adulterum	<i>omitted</i> <i>omitted</i> (a) adultero	<i>omitted</i> tam	<i>omitted</i>	patri <i>Paul.</i>
12. filia cuiusque domi sui		filiam domui	domus	cuiuscumque (<i>Paul.</i>) <i>omitted in Paul.</i>
13. sua manu familias pater si adulterio	familiae	suam manum	manum familiam si pater adulterium	} <i>omitted in Paul.</i>
14. prope est			(a) propest	
15. permittitur tamen etiam ei maritus			marito si (a. sii)	permitti tamen ei del (<i>Paul.</i>), permitti men etiam ei del (<i>Hus.</i>)
16. deprehensus corpore		deprehensus corpore	deprehensus	
17. quaestum faciunt et liberos	quaestum et liberos	habent et liberos	quaestum et liberos	et liberos (<i>Pith</i> (<i>Paul.</i>) <i>Codex V</i> <i>sontin. omits</i> libertos

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 80— <i>cont.</i>				
17. uxore		uxorem		
18. maritum deprehensam	maritus deprehensum	maritus	maritus	maritus (<i>Paul.</i>)
19. inpatientia	inpacientia	inpatientiam		
22. inuenta in uxore	inuentam uxorem	uxor		
23. maritus adulterum	adulterum maritus	maritum adulterum maritum	adulterum maritus	} omitted (<i>Paul.</i>) adulterum (<i>Paul.</i>)
eum domi	domui	domui	domui	
24. qui			que	
25. dimiserit				dimisit (<i>Paul.</i>)
26. tam adulteri	adulterii	adulterii	ta	adulterii (<i>Hus.</i>)
27. sub specie data ualebit	datam	malebit	datam	sub spe (<i>Pith.</i>); sus- pectae (<i>Hus.</i>)
PAGE 82.				
4. manserit mansione muliebri asperna- mentum	mulieri (<i>Index</i>)	manserint mansionem lepernamentum	apernamentum	
5. moriantur rei		quia rei	moriatur	
6. Paulus libro sententia- rum II. sub titulo de adulteris	II. (<i>omitted in text</i>), given <i>in index</i>	idem (<i>omit- ting the re- mainder</i>)	item de adulteriis	
7. stuprauerit puniatur		puniatur	strupauerit puniatur	punitur (<i>Paul.</i>)
8. uoluntatesua stuprum			uoluntatem suam stuprum	
8-9. dimidia parte		dimidiam partem	dimidiam partem	
9. multatur		multarum		
10. parte		martem		
12. constitutio cognoscitur			constitutio (<i>α.</i>) cogooscitur	
12-13. (item Theodosianus)	idem theodosia- nus (<i>Index</i>)			

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings,
PAGE 82— <i>cont.</i>				
14. Impp. Valentinianus Theodosius Arcadius Auggg	ualentianus augg	imperatoribus ualentiniano theodosio archadio aggg	aag orentium	
15. Orientium patimur	patiamur			
15-16. urbem Romam uir- tutum	urbis Romae uirtutem	urbis Romae uirtutem	urbis Romae uirtutem	
16. diutius effe- minati uiro	uiros	uiros	diutium et fe- minati uiros	uiro (<i>Mom.</i>); uiros (<i>Hus.</i>)
16-17. contamina- tione		contaminationem		
17. agreste illud a priscis	ageste ad	aggrestit illum hac pristis	acreste illum	
17-18. robur fracta		robor facta	robor facta	
18. plebe saeculis conditorum	seculi	plero regulis	pleue (<i>a.</i>) conditurum	pube (<i>Jac. Gothofredus,</i> <i>Hus.</i>)
19. principum	printipium	principium	principium	
19-20. orienti k(arissime)ac iuc (undis- sime) nobis	orientikp. dcxxx viii ac iuc nobis; (<i>index</i>), orienti; ; , , , kp. dcxxxviii ac iuc nouis (<i>text</i>)	orienti (<i>all the rest omitted</i>)	orienti (<i>all the rest omitted</i>)	orienti k(arissime)ac iuc (undissime) nobis (<i>Mom.</i>)
20. laudanda igi- tur experien- tia tua omnes quibus flagiti usus	} }	idem omnibus	omitted qui ius flagitiosus luxus	omitted (<i>Theod. C.</i>) { flagitiosus luxus (<i>Hus.</i>) flagiti usus (<i>Theod. C.</i>)
21. uirile muliebriter sexus	uiri	uirili muliebriliter sexu	uirili	uirile (<i>Theod. C.</i>)
22. patientia nihilque dis- cretum		patientiam nihilque discretu	patientiam	nihil enim d. uidentur (<i>Theod. C.</i>)
22-24. occupatos, ut fl. posciti., a. omnibus eductos, p. d. u. lupanaribus	o. ut. fl. p. (pos- sit in <i>a.</i>) a. o. seductos p. d. u. lupanaribus	occupatus ut. fl. p. i. a. o. (<i>a.</i>) seductus (<i>b.</i>) seductos p. d. u. l.	seductos	instead of occupatos lupanaribus <i>Theod. C. has</i> huius modi scelus.

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 82— <i>cont.</i>				
24. flammae expiabit	flamme	flammas expiavit	flammae expiavit	flammis (<i>Theod. C.</i>) expiabunt (<i>Theod. C.</i>)
25. intellegat sacrosanctum	sacrosanctis	sacrasanctis	intellegat sacrosanctis	
26. sexum	(a) se sexum (?)			
27. perdidisset prop. pr. id. maias romae	prop. prid.	(a) perdixisse (b) perdidisse propriae (a) maas	propridiae maias <i>omitted</i>	} pp. in foro Traiani viii. id. Aug. Valen- tiniano Aug. iiii et Neoterio cons. (<i>Theod. C.</i>)
28. atrio mineruae	minere	atrium minerue	minerue	
PAGE 84.				
4. muliere uxore	mulierem uxorem	mulierem uxorem	uxorem	
4-5. pudenda patris sui		pudendam	<i>omitted</i>	
6. nuru sua morianantur		nurum suam	nutru moriatur	
8. Ulpianus li- bro regula- rum singu- lari sub titu- lo de nuptiis	U. l. regulari de nuptiis sub titulo	U. l. singulari nuptiis sub titulo	U. l. singulari de nuptiis titulo	
9. liberos sint	sit	sit	sit	liberos infinite (<i>Ulpian</i>) sit (<i>Ulpian</i>)
10. cognatos transuerso		cogatur	cogatur transuersu	
11. non poterant		competerant		
12. autem tantum				autem etiam (<i>Ulpian</i>) tamen (<i>MS. of Ulpian</i>)
13. filiam sororis nec amitam nec materteram	filia mater terram	filia amita matertera	filia matertera	sororis filiam (<i>Ulpian</i>) aut (<i>Ulpian</i>) uel (<i>Ulpian</i>)
14. sint eam quae		ea	ea	sit (<i>Ulpian</i>) eadem (<i>Ulpian</i>) quae (<i>omitted by</i> <i>Ulpian</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 84— <i>cont.</i>				
15. quae uel socrus fuit uxorem		quem <i>omitted</i>		nostra fuit (<i>Ulpian</i>) uxorem <i>before</i> nouerca <i>in previous line</i> (<i>Ulpian</i>)
16. eam quam incestum matrimonium		ea (<i>a.</i>) quam <i>omitted</i> incertum	incertum matrimonio	
17. contrahit liberi potestate eius	liberis eis	contrahi eis	contrahi potestatem eis	eius (<i>Ulpian</i>)
19. Paulus libro sententiarum [secundo]sub titulo de nup- tiis	paulusliber sen- tentiarum de nuptiis sub titulo	} idem de nup- tiis sub titulo } de nuptiis		
21. filiam uxorem			filia <i>omitted</i>	
22. possumus proneptem	non possumus pronept(a)e	non possumus	non possumus pronept(a)e	
23. cognatio		cognati		
24. ac non	hac	hos	hac <i>omitted</i>	
25. nec socrum [nec] priuig- nam	nec <i>omitted</i>	non socrum nec <i>omitted</i>	nec <i>omitted</i>	
26. incesti ducere		incerti	incerte	dicere (<i>Hus.</i>)
27. materteram sed qui uel	sed uel		matertera sed uel qui	qui affinem uel (<i>Hus.</i>)
28. remisso mulieri iuris errore	remisso mulieris iuris errore	mulieri sorore	mulieris errore	
29. lege iulia ducta	legis iulia ductam	legem iuliam ductam	ductam	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings,	
PAGE 86.					
1. quinto sub titulo de nuptiis	(<i>index</i>) omitted de nuptiis sub titulo	de nuptiis sub titulis	de nuptiis sub titulo		
2. Diocletiani impp. talem	dioclitiani	imperatoribus tali	dioclitiani		
3. punire commemorat	puniri	puniri (a) commerant (b) commemorant	puniri		
4. Diocletiani maximiani	dioclitiani (<i>text</i>) dioclisiani (<i>ind</i>)	diocetiani	dioclitiani (a) maximini	} <i>Just, C. has</i> impp. diocletianus et maxi- mianus A. A. et. Caess.	
4-5. [Augg. et constantii et maximiani]	} omitted	omitted	omitted		
5. piis					
6. religiosis		quis	quis		
7. sancteque constituta	contitute	relegis his sancieque			
8. quibusdam		quibusdum			
9. incesteque oportere		incerteque opponere	incerteque		
10. cum	aeum				
11. nos disciplina cohortatur	non	disciplinam queortatur			
12. deos Romano		romanis	deus		
fuerunt	fuerint	fuerint	fuerint		
13. placatos futuros	(a) placatus futurus	placatus futurus	futurus		
13. cunctos			cuncto		
14. nostro agentes	nostro gentes	nostram habentes			
14-15. religio- samque et quietam et castam in omnibus mere colere perspexer- imus uitam	religiosasquae et quietem et castum in o. more c. p. u.	r. (et omitted) qu. et castam nominibus more c. p. u.	r. et quietem (et omitted) c. in o. more c. p. uita	religiosamque uitam et castum in omnibus morem colere per- spexerint assuetum (<i>Hus.</i>); religiosamque quietam et castam in omnibus more colere perspexerimus uitam (<i>Blume</i>). mere (<i>Mom.</i>); more mai- orum (<i>Cujas</i>)	
17. religiose atque ueteris		religionem uestri	religione que uestris		
18. honestati	honestatum <i>nearly obliterated in MS.</i>	honerati	honorati	honestatem (<i>Scal.</i> <i>Apograph</i>)	

TEXTUAL VARIANTS.

Line and Word.	Berlin,	Vienna.	Vercelli.	Other Readings.
PAGE 86— <i>cont.</i>				
18. coniunction- em	coniunctione		coniunctione	
19. qui inde deinceps nascentur seruata religione	qui cum deinceps seruata religione nascetur	qui deinceps seruata religionem nascentur	qui cum deinceps seruata religione nascitur	qui inde deinceps (<i>Mom.</i>) nascentur seruata re ligione (<i>Mom.</i>)
20. honestate		honerate		
21. id sancta	sanctae	ita sanctus	(a) idco (b) ideo suprascripte	sancta (<i>Cujas</i>)
22. nomina optineant affectus	afectos	effectos	nomine optineamus defectos	
23. consanguini- nitati	consanguinitatis	consanguinitatis	consanguinitatis	
24. [duratura]ea constat	ea	ea constant	ea	
25. promiscuo ritu		promiscui oritur	promiscuo ritum	
26. instinctu execrandae sine respectu	instinctum exercendae	instinctum exer- cendae; (a) ex- ercere ne	instinctum ex- ercendae ne respectum	instinctu execrandae (<i>Schult.</i>)
27. quaecumque			quicumque	
28. inperitia ignorantia	inperitiam	peritiam ignorantiam	peritiam	
29. ritu matrimonii admissa	ritum matrimonii si	admissa	admissam uerissime	
30. seuerissime uindicanda contempla- tione	uidicanda contempla- tionem	contempla- tionem	contempla- tionem (a) omitted	
32. ante incestisque se		incertisque omitted	re	
33. adeptos esse		ademptos essent	ademptos	
34. indulgentiam sciant post tam uitam	indulgentia sciat	post iam uti eam	posita uita	
PAGE 88.				
1. sibi esse conces- sam sciant tamen non legitimos		esse c. sc. tamen non legitimos repeated	sibi quidem legitimo	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 88.				
2. quos tam coniunctione genuerunt	coniunctionem	tamen genuerint	cons coniunctionem	
3. infrenatis	inefrenatis	ineffrenatis	ineffrenatis	effrenatis (<i>Hus.</i>)
4. oboedire		obediss(a)e	obediss(a)e	
5. uenia liberatos quos genuerunt	ueniam quod	ueniam liberaris genuerint	uel libertos genuerint	
6. successione		(a.) successione (b.) successione emne		
arceantur	careatur	caretur	caretur	arceantur (<i>Puteanus</i>)
8. et optassemus nec ante eius modi	negante	optaremus huiusmodi	<i>omitted</i> optaremus	
9. esset	esse	esse	esse	
clementia		clementiam	clementiam	
10. corrigendum sed posthac	sed et post hanc	succurrendum sed et post hanc	sed et post hanc	sed (<i>Mom.</i>)
10-11. religionem sanctitatem- que in conu- biis copulandis		quo nobis	religione scitatemque quo nobis copulandi	
11. se			rem	
14. numero		numerus		
15. matri- monium edicto		edicti	(a.) matromonio (b.) matriomonio	
16. pronepte itemque matre proauia	} proneptemque prohabiae	} proneptite itemque	mater	
17. sorore ex	<i>omitted</i>	<i>omitted</i>	<i>omitted</i> et	sorore (<i>Just. C.</i>)
18. socru nuru ceterisque quae	socrus norus	socrus nurus nurus ceteras	socrus nurus	nuru socru (<i>Just. C.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 88— <i>cont.</i>				
19. antiquo iure uolumus				iure antiquo (<i>Just. C.</i>) se uolumus (<i>Just. C.</i>)
20. sanctum uenerabile	hanc tantum (<i>a.</i>) uenerabile (<i>b.</i>) uenerabiles	nanctum uenerabiles	nanctum uenerabiles	sanctum (<i>Putean.</i>)
21. romana maiestas	romanam gesta			
22. numinum suas religione	non mirum sua	nominum <i>omitted</i>	nominum religiones	numinum (<i>Putean.</i>)
23. pudorisque obseruatione		pudorisqui obseruationem		
24. uenia quae	uenia	ueniam		
25. indulta		iudulta		
26-27. quae in diem III kal. Ian. Tuscoetanulino cons. uidentur	que in diem tertio kł ianuariorum tuscoetanulino (<i>a.</i> anulio) cons. uidentur	que in diem tertio kł ianuariarum tusco et anulino cons. uidentur	} <i>omitted</i>	
27. esse commissaque	esse commissam	esse commissaque		
28. nominis sanctitatemque	numinis sanctitateque			nomine
29. deprehenduntur admissa seueritate plectentur nec enim	deprehenduntur seueritatem	deprehenduntur amissa re ueritatem flectentur neque	deprehenduntur re ueritatem	
30. ullam nefario quisquam se	nullum	nullam nephariae quicquam re	nullam	
31. tam euidenti crimini	tam euidenti crimen	in tam euidetur crimen	in tam euidenti crimen	
32. dubitabit inruere	infuere	dubitauit	dubitauit	
32-33. Mai. Damasco Tuscoet Anullino cons.	maias damasco tusco et anolino cons.	madias } <i>omitted</i>	magias damasco et tusco	Wanting in MSS. of <i>Just. C.</i>

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 90.				
1. Hermogenianus sub titulo de nuptis	Ermogenianus sub titulo de nuptis	<i>omitted</i>	de nuptiis	
2. Impp. Diocletianus Maximianus Augg. Fl.	Impp dioclitianus Maximianus agg. ft.	imperatoribus diocletiani maximiani augustos (fl. <i>omitted</i>)	a. (fl. <i>omitted</i>)	
3. His incestas		<i>omitted</i> incertas	incertas	
4. clementia		clementiam	clementiam	
5. quam rescierint ilico		cum (a.) rescirent illi quoque		
5-11. Prop. id. Mart. [Tiberiano] et Dione cons. Hanc qu. c. G. t. d. n. in. qu. e. t. et s. a. t. et die [et cons.] i. e. adulteris	prop. id Mart et diogene cons. hanc. die (et cons <i>omitted</i>) id est c. p. V id. Iun. dioclitiano adulteris (adulterii <i>index</i>)	<i>idem</i>	de adulteris	
12. qui filiam uxorem duxerat per errorem	que u. d. p. errorem	per errorem uxorem duxerit	filia	
13. praeueniretur a delatore, diremit coitum	perueniretur dirimit cohitum	ahelatiorem dirimet choitum	a delatorem dirimitum	
14. respondit ei coitu	et coniunctae	R. et coniunctae	et coniunctae	coitu Mom.)
15. errore diremit coitum	errorem	errorem dirimit	errorem coitu	
16. creditor uoluntatis			creditor uoluptatis	
17. gradu tale	grado talem	gradum talem	talem	
18. dicitur in eos, qui incestas		incertas	de his incertas	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 90— <i>cont.</i>				
19. incesti legem	incestis lege	incerti	incerti	
20. nutu isdem	(a) nuto (b) noto	hisdem	hisdem	
21. adstipulan- tibus	abstipulantibus	abstipulantibus	abstipulantibus	
24. uxore	uxorem	uxorem		
25. patris	patri			
PAGE 92.				
1-2. sorore concubue- rit cum		} <i>omitted</i>		
1. dicit			dicet	
2. nuru	nura			
3. dicit			dicet	
4. socru dicit	socrus		dicet	
5. sorore dicit		sororem	dicet	
6. sorore		sororem		
7. concubuerit		dormierit	dormierit	
8. sorore uxoris dicit		sororem (a. uxorem) so- roris	dicet	
9. uxore omnis	omne	uxorem		
10. pecore dicit		pecude	dicet	
14-15. [quoquo modo diurnum]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	quoquo modo diurnum (Blume)
15. autem si se audeat telo defendere	autem si se aut tello	aut ensis se aut defenderit	aut tensis se aut defenderis	autem si se audeat (Schult., Blume)
16. scitote consulti sicut	si cui	sitote consultum si cui		
17. manifestat		manifestas		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 92— <i>cont.</i>				
18. nocte			noctem	
18-19. fur et percussëriteum alius et mortuus fuerit	furem percussërit	fur percusserit	<i>omitted</i>	
19. hic	hi	hi		
20. fuerit mortis	<i>omitted</i> morti		morti	
21. morietur			moriatur	
22-23. Paulus libro senter-tiarum V ad legem Cor-neliã de sicariis et ueneficis	(<i>liber index</i>)	a legem	(a) idem <i>omitted</i>	
	beneficis	beneficis		
24. cum defenderet	defendere	con- defendere	defendere	
25. occiderit lege qui		legem si	occiderit eum si	
28. Ulpianus libro xviii ad edictum sub titulo quadrupes	Ulpianus libro viii (<i>text and index</i>)	Ulpianus libro viii tituli quadrupedem	<i>omitted</i> idem	octauo decimo (<i>Digest correctly</i>)
30. iniuria adicitur	iniuriam	iniuriam adigito	iniuriam adigitum	
PAGE 94.				
1. iniuria id esse	iniuriam	iniuriam adesse	iniuriam	
2. [iniuria]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	
3. quemcumque alium qui	quicumque	quicumque alio	quocumque	si quemcumque (<i>Digest</i>) quis (<i>Digest</i>)
4. iniuria occidissee	occisisse	iniuriam occisisse	iniuriam occisisse	
6. aequè permittit sed ita demum	aequè sed ita lex demum	equaè sed ita lex demum	ea quem permitti sed ita lex demum	aequè (<i>Cujas</i>) <i>perhaps the original had necare permittit sed ita demum lex instead of aequè... demum</i>
7. defendat an lege	defendatur legem	a ¹ si a ²		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 94— <i>cont.</i>				
7-8. et Pomponius dubitatum haec lex non sit in usu	nunc haec lex,	idem	et Pomponius deuitat nunc haec lex, n. s. i. u.	<i>Hus. omits non</i>
8. et si quis noctu		si	idem si	metu quis mortis (<i>Digest</i>)
9. furem dubitamus quin lege Aquilia [non] teneatur	qui in <i>omitted</i>	fuerem ¹ qui in legem Aquiliam <i>omitted</i> teneatur uideamus ²	qui in <i>omitted</i>	dubitabitur (<i>Digest</i>) non (<i>Digest</i>)
11. iniuria etiam lege cornelia		iniuriam legem corneliam		et (<i>Digest</i>) lege (<i>omitted Digest</i>)
12. accipere hic oportet non et		oporteat	non <i>omitted</i>	hic accipere (<i>Digest</i>) et <i>rightly omitted in Digest</i>
13. iniuriarum quod	iniuriam	iniuriam	iniuriam <i>omitted</i>	
14. factum est, contra ius, culpa	factum contrarius	factum culpam		
16-17. ulp...tit. de furibus		idem	idem defurtibus	
18. forum nocturnique	furtum coctorniquae	furem quodturniquem	furem et nocturni qui	forum (<i>Pith.</i>) nocturniquoque (<i>Hus.</i>) nocturnique (<i>Blume</i>) nocturni (<i>the preceding phrase omitted Digest</i>)
19. ordinem dummodo in	dum	dum modum	ordine dum modum	dummodo in (<i>Digest</i>)
20. sciamus publici temporari non egrediendum	temporarium	publicis temporalium monendum	publicis temporarium	sciamus (<i>after dummodo in Digest</i>) temporarii (<i>Digest</i>)
21. idem balneariis sed se telo	ideo (<i>text and index</i>) balneariis (<i>text</i>) balneriis (<i>index</i>)	balnearibus telo	idem et in <i>till line 24 addi-</i> <i>ciendi erunt</i> <i>after inuenta</i> <i>est p. 96 l. 12</i> ualneariis et telo	telo se (<i>Digest</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin;	Vienna,	Vercelli.	Other Readings.
PAGE 94— <i>cont.</i>				
21–22. uel effrac- tores uel	uel efractores uel		factores res uel	
22. ceteri his similes	ceteris miles	ceteri similes	ceteris miles	ceteri his similes (<i>Digest</i>)
23. poena humiliores, honestiores uero relega- tione adficiendi	p(o)enas	p(o)enas humiliores hon- estiores uero relegationem	p(o)enas	uel. honestiores relega- tionis (<i>Digest</i>)
25. Paulus libro sententiarum II sub titulo de furiis	P. liber s. (<i>text</i>) P. liber s. II. (<i>index</i>) s. t. d. f.	efficiendi } idem	{ idem de furi- bus	
26. damnatus				condemnatus (<i>Paul.</i>)
PAGE 96.				
1. qui contractat		contraectat	(a) contractat	qui dolo malo (<i>Paul.</i>) (<i>Hus.</i>)
3. et qui intra terminos	qui <i>omitted</i> (a.) terminus	terminis	et qui infra	
3–4. loci, unde furatus est	locum defuratus est	fur est		unde quid (quis <i>good</i> <i>M.S.S.</i>) sustulerat (<i>Paul.</i> , <i>Hus.</i>)
4. comprehensus				deprehensus (<i>Paul.</i>); cum re deprehensus (<i>Hus.</i>)
4–5. locum quo 5. destinauerat perueniret nec manifestus est fur in	locum (quo <i>omitted</i>) d. p. nec manifestatus e. f. intra	} <i>omitted</i>	locum quem	perueniret (<i>Paul.</i>) fur est (<i>Paul.</i> , <i>Hus.</i>)
6. rapiendo comprehensus eum fecisse				faciendo (<i>Paul.</i> , <i>Hus.</i>) deprehensus (<i>Paul.</i>) eum furtum fecisse (<i>Paul.</i>); furtum fecisse (<i>Hus.</i>)
7. tenetur		(a) <i>after</i> tenetur <i>has</i> quidem furtiuam		is tenetur (<i>Paul.</i> , <i>Hus.</i>)
7–8. est inuen- tum				quaesitum et inuentum est (<i>Paul.</i> , <i>Hus.</i>)
8. is qui rem ali optulit	his	<i>omitted</i> quidem mali obtuli	(b) his (a) <i>omitted</i> mali	
9. se inueniretur actione is	accionem his	rem inuenitur actionem ira	accionem his	

TEXTUAL VARIANTS.

Line and Word,	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 96— <i>cont.</i>				
10. perisse conceptiua autem				perdidisse (<i>Paul.</i>) concepti is (<i>Paul.</i>)
10-11. qui rem concepit et in- uenit oblatis agere potest	oblatae potest	agere } <i>omitted</i>	<i>omitted</i>	{ qui r. c. (id) est in- uenit oblatis agere potest (<i>Paul.</i>)
12. concepta	concepti	concepta	concepta	concepta et (<i>Paul.</i>); concepta id est (<i>Pith.</i> , <i>Hus.</i>)
16. testis	testes			
18. contentio	contemptio			
21. ei delebitis	deletis	<i>omitted</i> delebit	deletis	
22. medio ceteri	medium		ceteris	
24. paulus libro singulari titulo	p. liber s.	{ idem tituli	<i>omitted</i>	
25. legem	lege			
26. dixerit ac	dixerint	haec		
27. esset		esse	esse	
PAGE 98.				
1-2. paulus libro sententia- rum quinto sub titulo ... et de quaes- tionibus	p. liber	{ idem	<i>omitted</i>	{ et de quaestionibus } <i>omitted in Paul.</i>
3. Hi				hi <i>omitted in Paul.</i> and <i>Digest</i>
falso uel uarie	falsum uel aliqua	falsum uel aliqua	falsum uel aliqua	falso uel uarie (<i>Paul.</i>), <i>Hus.</i> adds uel oblique
dixerunt utriue	utriusue	dixerint	dixerit	
4. prodiderunt		prodiderint		
4-5. aut in exili- um.....sub- mouentur				{ a iudicibus competen- ter puniuntur (<i>Digest</i>)
4. exilium aguntur insulam		exilio arguntur insula	exilio	
5. submouentur	submouetur	submouetur	submouetur	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 98— <i>cont.</i>				
6-7. Idem libro [sententiarum quinto sub titulo] ad legem Corneliam de sicaris et ueneficis	idem liber ad legecorneliade s. et beneficis (<i>index</i>). idem libro ad legem corneliam de sicariis et beneficis (<i>text</i>)	idem libro ad legem cornel- iam de sicariis et beneficis	idem librum ad legem cornelia de sicaris et beneficiis	Idem libro sententiarum quinto sub titulo (<i>Blume</i>); idem (eodem) libro (sub titulo) ad legem corneliam de sicariis et ueneficis(<i>Hus.</i>)
8. cornelia poenam infigit	corporalia penam infigit	poena	infigit	
9. eiusque furtiue	furtique			eiusue (<i>Paul. correctly</i>)
10. uendiderit		et uendiderit		
11. falsumue quo mortisue	mortis suae	falsum quod	falsum	
12. poena		poenam	poenam	
13. uindicari crucem	uindicare	uindicare	uindicare cruce	
14. subiciuntur				obiciuntur (<i>Paul., Hus.</i>)
15-16. Paulus libro senten- tiarum quinto sub titulo ad legem corneliam testamentaria- m	Paulus liber s. V s. t. ad legem c. testamentaria (a lege c. testa- mentariam <i>index</i>)	P. l. s. quinque s. t. a. l. c. t.	(a) idem (b) Paulus	
17. qui perhibendum	hii qui	his qui	hi qui	qui (<i>Paul.</i>) perhibendum uel uerum non perhiben- dum (<i>Paul., Hus.</i>)
18. pecuniam ue ut			pecunia uelut	
19. corruperit			corruperat	
20. capite	capte			
20-21. ipso iudice	ipso iudicem	ipsum iudicem		
21. deportantur	deponantur	deponantur	deponantur	deportantur (<i>Paul.</i>)
23. falsum ueritate uero	falsus (<i>index</i>) uerum		ueritatem	
25-26. Ulpianus libro octauo [de officio proconsulis] s. t. d. p. l. c. testamentariae	ulpianus sub titulo de poena legis corneliae testamentaria libro viii	(ulpianus sub titulo <i>omitted</i>) de poena legis corneliae testa- mentariae libri viii.	idem	<i>Blume supplies</i> de officio proconsulis

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 98— <i>cont.</i>				
27. senatus consultum		senatum consultum		
27-28. statilio et tauro consulibus		statio et tauro consulibus		statilio Tauro et Scribonio Libone cos. (<i>Pith.</i> , <i>Hus.</i>)
28. quo poena qui quid	quidquid	quod poenam quicquid	quidquid	
29. quam testamentum [dolo malo falsum] signariue	<i>omitted</i> signaueriuae	<i>omitted</i> signari uel	<i>omitted</i>	in testamento (<i>Digest</i>) dolo malo falsum (<i>Digest</i>)
PAGE 100.				
1-2. item qui ad falsas testationes faciendas testamentauel falsa inuicem dicenda aut consignanda dolo malo coierint	item (idem <i>in-dex</i>) quod f. t. f. testamenta uel f. i. d. aut cons. dolo malo curauerit licinio V. et tauro cons.	} <i>omitted</i>	item quod f. t. f. testamentauel f. i. d. aut cons. dolo malo curauerit	item qui f. t. f. testimoniaue f. i. d. dolo malo coierint (<i>Digest</i>) <i>Mom.</i> has item qui ad f. t. f., etc. item qui falsas testationes faciendas aut consignandas testimoniaue falsa inuicem dicenda dolo malo curauerit (<i>Hus.</i>)
3. licinio V et tauro cons. item instruendam	struendam		} <i>omitted</i> struendam	instruendam (<i>Pith.</i>) on comparison with <i>Digest</i> xlviii., 10, 1 and <i>Digest</i> xlviii., 10, 20 (item in) struendam (<i>Hus.</i>)
4. testimoniaue pecuniam pactusue	pecunia	pecunia pactus sui	testimonia uel pecunia	
4-5. [societatemue]	societatem	societatem	societatem	societatemue (<i>Mom.</i>)
5. aliquam de ea re pactionem	} delationem	} delationem	aliqua } delationem	de ea re pactionem (<i>Mom.</i>) aliquam obligationem (<i>Hus.</i>) either reading can be supported from <i>Digest</i> xlviii. 10, 1. 20.* falsi poena coercentur et qui ad litem instruendam aduocatione testibusue pecuniam acceperunt, obligationem pactionemue fecerunt societatem inierunt.

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna,	Vercelli.	Other Readings.
PAGE 100— <i>cont.</i>				
6. item ad accusationem	ab occisione (<i>index</i>)	idem	idem	ad accusationem (<i>Pith.</i> <i>rightly from Digest</i> xlvii. 13, 2)
6-7. consulto quod		consultus		
7. Cotta messalla	cocta messella	cocta metalla	<i>omitted</i> mesalla	<i>coss. inserted by editors</i> <i>after messalla</i>
coercetur	cohercentur	cohereentur	cohercendum	
8. denuntian- dum uel non denuntiandum	uenundandum uel denudan- dum non	uenundandum uel denudan- dum non	(<i>a.</i>) ue n undan- dum (uel de- n u d a n d u m non <i>omitted</i>) (<i>b.</i>) remittendum uel	denuntiaudum uel non denuntiandum (<i>Cujas</i>) (<i>Cf. Dig. xlvii., 13, 2,</i> xlvihi., 10, 1, 2)
remitten- dumue				
9. consulto		consultus		
10. est poena	sit	sit	sit paenam	
13. item moyses		idem	idem moyses dicit	
14. aduersus		aduersum		
15. Ulpianus libro viiii [sub titulo] ad	<i>omitted</i>	} <i>omitted</i> <i>omitted</i> <i>omitted</i>	<i>omitted</i> <i>omitted</i>	libro viii (<i>Cujas</i>)
17. lege testimonium	legem	legem in testimonium	legem	lege (<i>Hus.</i>)
18. capite octogesimo septimo et capite	et vii	octogesimi et viimi	capitulo capitulo	
18-19. octogesimo octavo		octogesimi octavi		
19. [capite octo- gesimo octauo] his	his uerbis	his uerbis	his uerbis	capite octogesimo oc- tauo <i>added by Lach.</i> his uero (<i>Lach.</i>)
20. hac ne licito	in hac ne licito	in hac nec licito	in hac nec licito	
21. parenteue libertoue libertiue libertaue liberauerit	parentemu(a)e libertus liber- tauerit	parentemu(a)e liberta uel libertus liberta- uerit	parentemu(a)e liberto uel libertus liberta- uerit	libertiue libertaue liberauerit (<i>Mom.</i>); libertaue liberauerit (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 102.				
1. quive impubes erit iudicio publico damnatus est qui	impuber erit <i>omitted</i>	quibus impuber erit <i>omitted</i>	qui uel inpuere erit <i>omitted</i>	impuberes erunt (<i>Digest</i>) iudicio p. damnatus erit qui (<i>Digest</i>)
2. in integrum est quive custodiaque	 custodiaqu(a)e	 custodiamque	 in integrum eorum qui uel custodiaqu(a)e	 erit (<i>Digest</i>) custodiaue (<i>Digest</i> correctly)
3. publica erit quive depugnandi auctoratus quive		publicauerit depugnandia (a) dictoratus	qui uel qui uel	
4. ad bestias depugnare se locauit locauerit praeterquam qui iaculandi	ad <i>omitted</i> se <i>omitted</i> qui iaculandi	 <i>omitted</i> (a.) lacauerit praeterquem	a bestias qui uel	 ut depugnaret (<i>Digest</i> , Hus.) locauit <i>omitted</i> in <i>Digest</i>
5. causa urbem est erit palamue corpore	 corporem	causam steterit corpus	urbe steterit palam uel	 quaeue palam (<i>Digest</i> , Hus.) <i>omitted</i> in <i>Digest</i>
6. feceritue, quive ob dicendum	fecerit	<i>omitted</i>	qui uel	 after dicendum <i>Digest</i> inserts uel non di- cendum
7. iudicatus				iudicatus uel conuictus (<i>Digest</i>)
7-8. nec uo [lens] quis eorum hac lege in reum testimonium dicit	neuequis eorum hac legem in reum testimo- nium dicat	neque quis eo- rum hac lege in hoc testi- monium dicat	neque quis eo- rum hac lege in reum testi- monium dicat	nec uolens quis eorum hac lege in reum testi- monium dicit (<i>Mom.</i>) nequis eorum hac lege in reum testimonium dicat (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 102— <i>cont.</i>				
8-9. octogesimo septimo his inuiti in reum testimonium	octogesimo septimo his homines inuiti in reum testimonium	octogesimi vii hi homines inuiti in reum testimonium	octoginta septimum	<i>Mom. deletes homines. octogesimo septimo Hi homines inuiti in r. t. (Hus.)</i>
9. ne dicunto qui sobrinus	nec dicunt	nec dicunt consobrinus	nec dicunt	ne dicunto (<i>Lach., Hus.</i>)
10. propioreue cognatione	propiore uere	propioreue cognationem	qui priore uel	
11. priuignusue reliqua	priuignusque (<i>b</i>) reliquia	priuignusque	priuignus qui	
12-13. Paulus libro sententiarum[v]sub titulo de testibus et quaestionibus	(<i>paulus libro omitted in index</i>) p. l. sent. s. t. d. t. et. qu. (<i>text</i>)	<i>omitted</i>	<i>omitted</i>	et quaestionibus (<i>omitted in Paul.</i>)
14. suspectos	susceptos	(<i>b</i>) suscoeptos (<i>a</i>) susc(o)eptus <i>omitted</i>	susc(o)eptus	suspectos gratiae (<i>Paul.</i>)
et quos de domo	quod			
15. eduxit infamauerit		deduxit	deduxit	de domo produxerit (<i>Paul., Hus.</i>) infamarit (<i>Paul.</i>)
16. in testibus spectari	<i>omitted</i> expectari	ex(s)pectari	ex(s)pectari	teste (<i>Paul.</i>)
16-17. in adfinem	si sint adfinem	in hac finem	in adfinem	
18. patroni et	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	<i>omitted in Paul., added by Hus. cf. Digest xxii., 5, 4</i>
19. uerae	hi uere	iubere	iuuere	uerae (<i>Paul.</i>)
20. corrumpit			corrumpit	
23-28. moyses... liberabitur				Moyes liberabitur <i>is also to be found in the Beauvais Codex</i>
23. moyses dicit		moyses dixit	moyses dixit	respondit moyses (<i>Beauv. Codex</i>)
24. aliquis proximo suo	aliquid proximum suum (<i>index</i>)			
aut uas			et	aut aurum aut uasa (<i>Beauv. Codex</i>)
25. de domo si inuenitur		de eo homo		si inuentus fuerit (<i>Beauv. Codex</i>)
qui furatus est		qui furatus est <i>twice</i>		
26. reddet fur accedet	fur accedat	reddat furanti de	eam rem reddat	reddat (<i>Beauv. Codex</i>) fur accedat (<i>Beauv. Codex</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 102— <i>cont.</i>				
26-27. is qui com- mendatum susceperat	his q. c. s.	is que		} dominus domus (Beauv. following Jerome's version).
27. ante iurabit	iuravit	stabit ante	iuret	
27-28. nihil se ne- quiter egisse de omni re		n. s. n. egisset de o. re		nihil s. n. e. malest (i.e. male se) cogitasse neque interceptisse de tinnuire (Beauv. C.)
28. commendata		commendatam		
PAGE 104.				
1. Modestinus libro differ- entiarum se- cundo [sub titulo]	sub titulo (omit- ted)	} omitted	omitted	sub titulo (added by Mom.)
2. et commodato	uel commendato		et commendato	et commodato (Hus.) uel commendato (Mom.)
3. commodati	comendati	quomodati (?)	commendati	commodati (Hus., Mom.)
et	est	est	est	
4. depositi culpa	de depositi culpam			
4-5. condemnan- dus		condempnatus		
5. commodati enim contractu utriusque	comodati contractus		commendati enim omitted	Hus. adds in
		utrisque	utrisque	
7. causa sola uertitur	causula	causam solam uestitur	uestitur	
et ibi	tibi			
9. iudicium	iudicio	iudicio	iudicio	
10. uxoriae	uxori et	luxuriae	uxori omitted	
et culpa	culpam			
11-13. iudicium dolus. non etiam culpa liceat in tutelae iudicium utrumque d. c. s. pupilli non etiam	} iudicio dolus non etiam	iudicio d. hi. n. e. c.	iudicio d. n. e. c.	
		 liceat in t. iudicio u. d. c. s. polli n. e.	 liceant in t. iudicio utrorumque d. c. s. p. n. e.	
13. tutoris		(b) rectoris		
14. administra- tione		administra- tionem		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 104— <i>cont.</i>				
14. uersetur damnatus	uersatur	uersatur	uersatur d. non fit	
14-15. infamis est qui uero commodati damnatur		} <i>omitted</i>		
15. fit infamis alter		sit infamis alter enim	sit	
16. culpam actione		actionem	culpa	
17. depositi conuentus	deposito	depositus	deposito	depositi (<i>Digest</i>) conuentus seruo consti- tuto (<i>Digest</i>) cibariorum (<i>Digest</i>)
cibariorum	ciuariarum	cybariarium	ciuariarum	
18. at is commodata	ad his com(m)endata est	ad his (b) com(m)en- data est (a) commen- dantem	ad his com(m)endata est	
cibariorum	ciuariarum	cybariarum	ciuariarum	cibariorum (<i>edd.</i>)
19. iure perse- quitur		siue persequen- tium		
20. aegrum			eorum	
20-21. res depo- sita subripiatur	respondit de- posita subriatur (<i>index</i>)	de dominos sub- ripiantes subripiantur	} <i>omitted</i>	
dominus dumtaxat furti actionem	dominus domui	dominus domui furtu	domus domui actione	dominus dumtaxat (<i>Schult.</i>)
22. eius	<i>omitted</i>			
22-23. in rem factas		idem facta		
23. rem retinere est	se sit	se sit	se retineri sit	rem (<i>Edd.</i>) <i>grammatically should be est (Mom.)</i>
24. soluendo fuerit actio commodati	soluenda actio fuerit	soluenda actio fuerit	soluenda actio fuerit commodatis	soluendo fuerit actio (<i>Pith.</i>)
25. semper simplum		rem per	rem per simplo	
26. uel naufragii incendii		naufragii incendiu		
27. res depona- tur		reponatur	re deponatur	

TEXTUAL VARIANTS.

Line and Word.	Berlin,	Vienna.	Vercelli.	Other Readings.
PAGE 106.				
1-3. Hermogenianus sub titulo depositi huiusmodi constitutiones: Idem Augg [et] Caess. Fl. Munatio	Ermogenianus sub titulo de (de <i>omitted in index</i>) depositi huiusmodi inseri constitutione idem augustus cesar flavius munatio	idem	<i>omitted</i>	H. sub t. de deposito h. i. c. : I. Augusti et Caess. Fl. M. (<i>Hus.</i>)
4. casum praestare certi	casu	casu praestari	casu et rei	
5. itaque proponas ui fuere	sui	utique sui	propaenas suis fuerit	
7. rector		rectorem		
8. necti adhibita uarietate	nectu uarietatem	nec adhibitam uarietatem	nec	necti (<i>Hus.</i>)
9. ortum sua ratione decidetur	hortum rationem	(a) certo (b) certum suam nationem decidatur	suam natione decidatur	
10. subscripta VIII K. Iul. Serdica Augustis cons.	Serdica augustus cesaribus			
11. Idem Augg. et Caess. Fl. Aurelio Altenico Andronico	idem augustus (aug. ind.) et cesare (ces. ind.) Fl. Aurelio altenico andronico	<i>omitted</i>	<i>omitted</i>	idem Augusti et Caesares Fl. Aurelio Attenico Andronico (<i>Hus.</i>)
11-12. eos penes 12. quos materiam proponis	eus perne materiam	eas poenas quas materiam	eas paenas materiam propaenis	te proponis (<i>Hus.</i>)
13. rectorem qui eos	quod	rectorum quod	quod	qui eos (<i>Hus.</i>)
14. fecerint quominus possint	fecerunt cominus	cominus	cominus positi	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 106— <i>cont.</i>				
15. conpellet Subscripta VI. K. April.	subscripta kl. april	VI subscripta kl. aprilis	compellit	compellet (<i>Hus.</i>)
15-16. Sirmi Caess. cons.	syrmi cess. _____ cons.	<i>omitted</i>	} <i>omitted</i>	} Sirmii C. } Cons. (<i>Hus.</i>)
17. Idem Augg. et Caess. Aurelio et Eustathio et Diosimo	idem augustus et cesares a. et eustatio et diosimo	} idem		
18. suscepit aliud		accoepit alium		
19. memor			memoria	
21-22. qualitate suam ordinabit sententiam subscripta XIII k. Nou. Appiaria	suae ordinavit sententia subscri. XIII k. nou. appiaria	qualitatemque ordinavit } <i>omitted</i>	suae ordinavit <i>omitted</i>	<i>Mom. suggested</i> XVI k. nou. appiaria caess. cons. (<i>see his essay,</i> <i>Die Zeitfolge der</i> <i>Verordnungen</i> <i>Diocletians in Actis</i> <i>Acad. Berol., a., 1860,</i> <i>pp. 438, 442.</i>
23. Idem Augg. et Caess. septimiae quadrattillae	idem augustus et cesares (ce- sare <i>index</i>) uii et quadrattille (quatrattille <i>index</i>)	} idem	<i>omitted</i>	(quadrattillae <i>omitted</i> <i>Just. C.</i>) <i>omitted Just. C.</i>
dolo malo		dolum malum		
24. depositum conuentus	posito			conuentus et condem- natus. <i>Just. C.</i>
ad eius			<i>omitted</i>	
24-25. restitutionem cum infamiae periculo urguetur	cum infam(a)e periculo resti- tutionem	cum infam(a)e periculo resti- tutionem	cum infam(a)e periculo resti- tutionem	restitutionem cum infa- miae periculo (<i>Just.</i>)
25-26. Subscripta prid. idus decembres nicomedia CC. cons.	scripta id decem ii comedia ccs. cons.	urguntur subscripta pridie id. dec. <i>omitted</i>	} <i>omitted</i>	<i>omitted Just. C.</i>
				<i>omitted Just. C.</i> <i>nicomediae (Hus.)</i>

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna,	Vercelli.	Other Readings.
PAGE 106— <i>cont.</i>				
27. Paulus libro secundosen- tentiarius sub titulo	paulus <u>lib.</u> (<u>liber index</u>) sent. sub titulo secundo	} idem aliud	<i>omitted</i>	<i>some such phrase re- quired as sed pariter seruandum (Mom.)</i>
28. alium id				
29. seruandum				
29-30. quod [ad] breue	quod breue	quod breuem	quod breue	
31. metu ruinae incendii naufragii		me et in urbi nec incidunt naufragium	meturbine incidunt	
PAGE 108.				
3. causa deponit suspectam habens	habent	cause (deponet <i>omitted</i>) suspecto	} <i>omitted</i> suspecta	
3. rem commodat sacculum	res commodat sacellum	re commodat sacculum		
4. [signatum] penes quem	<i>omitted</i> poenae	<i>omitted</i> poenes que	<i>omitted</i> paenis	sacculum (<i>Paul. and Digest</i>) signatum (<i>Paul. and Digest</i>)
5. contrectauit actio		contrectauit actioni	contrectauit	contrectauerit (<i>Paul., Digest, Hus.</i>)
6. ex	hec			
7. praestantur			prestantur	
8. penes se depositam	poenae se posita	poenes sedem positam	poene	
9. directam utilem	direptam	direptam	direptam ut ille	
10. eaque uti tibi permisero	eam hanc quem tibi comissero	eamquae tibi promisero	eamquae tibi promisero	eamque tibi permisero (<i>Mom.</i>). eaque uti tibi permisero; <i>Blume</i> <i>after collating Digest</i> <i>XII, 1, 9, and XII. 1. 10</i>
11. mutua deposita	mutuam depositam	mutuam		
12. depositam redemeris post	deposita redimeris postquam	redimeris eam postquam	redimeris eam- que postquam	redemeris post (<i>Mom.</i>); postquam redemeris (<i>Krueger</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 108— <i>cont.</i>				
13. semel admis- so perpetua	semel amisso perpetuam	se mala misso perpetuo	semel amisso	
13-14. actione teneberis ex causa depo- siti lege duodecim tabularum in duplum actio	actionem t. et c. d. legem d. t. in d. a.	} <i>omitted</i>	actionem tene- bis ex c. d. l. d. t. in. d. actio	
15. edicto	edictum			
16. Gregorianus libro III sub titulo de de- posito	(<i>de omitted in index</i>)	} idem	idem	
17. Imp. Alex- ander A. Mestrio militi. incurso la- tronum			} <i>omitted</i> incurso l.	(militi <i>omitted</i>) <i>Just.</i> <i>C., Hus.</i>) si incurso (<i>Just. C.</i>) latronum uel alio fortuito casu (<i>Just. C.</i>)
18. deposita interfectum ab eis perierunt	inter prefectum	exposita	exposita perierint	ab eis <i>omitted</i> (<i>Just.</i> <i>C.</i>)
19. heredes dolum tan- tum				heredem (<i>Just. C.</i>) dolum solum et latam culpam si non aliud specialiter conuenit (<i>Just. C.</i>)
20. debuit pertinet praetextu commissi	debunt ex pretexto	potuit ex pretexto	ex pretexto	praetextu (<i>Just. C.</i>) commissi uel alterius fortuiti casus. (<i>Just.</i> <i>C.</i>)
21. quae potestate heredis sunt	quae heredi sunt	quem potestatem	quem potestatem heredi	sunt uel quas dolo desiit possidere (<i>Just.</i> <i>C.</i>)
21. restituuntur	restituuntur			
22. [ad] exhibendum	<i>omitted</i> (<i>a</i>) exhibendo	<i>omitted</i>	<i>omitted</i>	ad (<i>Just. C., Pith.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 108— <i>cont.</i>				
22. et	<i>omitted</i>	} <i>omitted</i>	<i>omitted</i>	etiam (<i>Just. C.</i>)
23. Prop. VII Kal. Iul. Maximo bis et Urbano conss.	prop. VII d kl iul. maximiano bis et urbano cc.			pp. iiii id. iul. maxim et urbano cons. (<i>Just. C.</i>)
24. Paulus libro responsorum v. sub titulo	P. liber r. v. s. t.	} <i>omitted</i>		
26. antoninus Agrippino	agripino			agripino
PAGE 110.				
1. uis effracturae praestare	sui efracture	sui	sui (a) efferacture	effracturam (<i>Just. C.</i>) conductor praesta (<i>Just. C., Hus.</i>)
2. si quid ex depositis	expositis	si quis expositis	si quis expositis	ex depositis (<i>Just. C.</i>)
3. extrinsecus horreis	horrei			extrinsecus (<i>after qu</i> <i>in previous lin</i> <i>Just. C.</i>)
perit depositorum	<i>omitted</i>	perit	perit	perierit (<i>Just. C.</i>) depositorum reru (<i>Just. C.</i>)
sarciri			sarcire	
4. Prop IIII non. Nou. Anto- nino IIII cons. Paulus respondit	prop. iiii non nou antonino iii const paulus R.	} <i>omitted</i>	<i>omitted</i>	pp. prid. non. ian. an nino a. iiii et balbi conss. (<i>Just. C.</i>) prop. A IV (et B bino) (<i>Blume, Hus.</i>)
5. praepositam				propositam
6. inputari posse	* <i>after posse exp</i> <i>titulo de depo-</i> <i>sito unde:</i> <i>incip.</i>	imputare		imputari (<i>Hus.</i>) * <i>Lach. correctly tur</i> <i>unde incip in</i> <i>undecimus</i>
10. inuolauerit aut		embolauerit et		
11. uendiderit uitulos restituere uitulo uno	uindederit uitulus restituere uitulum unum	restituatur	restituatur	restituatur (<i>Hus.</i>)
12. oue una		ouem unam		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 110 — <i>cont.</i>				
12. uenundetur			uenundatur	
14. Paulus libro sententiarum V sub titulo de abactori- bus	Paulus liber sententiarum sub titulo de abgeatoribus	} <i>omitted</i> de abactoribus	paulus libro sententiarum v. sub titulo de actoribus	abigeatoribus (<i>Hus.</i>)
15. plerum que				
16. dantur		pecorumque	datur	
18. abigunt ferro aut	habigunt a ferro	reabigunt a ferro	a ferro	aut si ferro (<i>Blume</i>), ferro aut (<i>Hus.</i>)
conducta manu		conductam ma num		
20. abactores sunt qui uel duas	abegeatores sunt	(abactores sunt <i>erased</i>) <i>omitted</i>	(abactores sunt <i>erased</i>) <i>omitted</i>	abactores sunt (<i>Paul.</i>) duas (<i>Paul.</i>)
21. [oues]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	<i>added by Hus.</i> , <i>omitted in Paul.</i> aut porcos (<i>Paul.</i>)
porcos abegerint	porcus	abigerit	abigerit	
22. numerum fuerit ablatum in poena	numero inponat	oblatum inponat	numero fieri oblatum inponat	in poena (<i>Paul.</i>), poena (<i>Blume</i>). in poenam (<i>Hus.</i>)
23. qualitate eius aut triplum	triplum	qualitatem triplum	eius apud triplum	triplum (<i>Paul.</i>) quadru- plum (<i>Schult.</i> , <i>Hus.</i>)
aut				uel (<i>Paul.</i>)
24. datur		dantur		
25. domino			dominum	
PAGE 112.				
1. idem titulo	cet (<i>index</i>)		item	
2. si ea de litigauerat		sic a deque	si ex litigauerit	litigat (<i>Paul.</i>) litigabat (<i>Hus.</i>)
3. remittendus conuictus furis	coniunctus (I. P. eodem	iremittendus foris	foris	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 112— <i>cont.</i>				
5. Idem Paulus eodem libro et titulo	libro et cet (<i>index</i>)	} <i>omitted</i>	<i>omitted</i>	
6. quodue aliud pecus		quodue (<i>b.</i> quod uel) aliud pecus		
abduxerit		adduxerit		
7. furem magis eum		non furem eum esse		
abactorem constitui	abegeatorem	constitutio		
8. Paulus libro singulari	(Paulus liber singulare <i>index</i>)	} <i>omitted</i>		
paganorum	(pagaconorum <i>index</i>)			
abigeis		(<i>a</i>) abiseis	ambigeis	
10. abigei damnantur		abysei dampnatur	ambigei	
11. Baeticae rescripsit	beticae et ipsi	betticae	battice	
12. ad forum	(<i>b</i>) furum (<i>a</i>) frum	a		
remittendus	premittendus	premittendus	premittendus	
13. condemnandus	condemnandis			
14. Ulpianus libro octauo de officio proconsulis	Ulpianus liber (<i>index</i>)	} idem de officio proconsulis	<i>omitted</i>	
14-15. sub titulo de abigeis;		de sub titulo abiseis puniendis	de abigeis puniendis	
16. de abigeis puniendis rescripsit concilio	<i>second de omitted</i>		scripsit	
17. Baeticae Abigei cum gladium	beticae	consulio betticae	betticae abigeis	consilio uetice rescripsit (<i>Digest</i>)
18. solent puniuntur		quod olantium	solet	
19. frequentius hoc maleficii alioquin et	frequentium	puniantur		id (<i>Digest</i>)
20. temporarium damnantur		maleficia loqui nec temporalium		
21. maximum	maximo	maximo	damnatur maximo	dantur (<i>Digest</i>) maximum (<i>P. Faber</i>)
22. ut ad gladium abigei		aut gladio	ambigei	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 112— <i>cont.</i>				
24. affectus rescriptum		rescripti	adfertur	adfectus (<i>Hus.</i>)
26. poenam	poena		paena	
27. differentia	differentiam			
28. et eos qui ad ludum			et eos qui ad ludum <i>before</i> est autem <i>in</i> <i>previous line</i>	
damnantur			damnatur	
29. debent	debet	debet	<i>omitted</i>	
PAGE 114.				
1. mandatis ludum /	damnatis	damnatis ludunt	damnatis	mandatis (<i>Pith.</i>)
2. pillari			pillearii	
3. interuallum	interpalam	interpella	interpella	interuallum (<i>Pith.</i> , <i>Lach.</i>), interualla (<i>Hus.</i>)
4. pillari rudem in- duere			pillari (b) rudem indulgere	rude batuere ((<i>Lach.</i>)
5. rescripto	(bel scripto <i>index</i>)	scripto	scripto	
6. parem poenam		patrem ponam		
7. idem	item (<i>text</i>) idem (<i>index</i>)	idem	item	
libro et titulo qui supra	liber et it (<i>index</i>)	libro et tituli <i>omitted</i>	<i>omitted</i>	
8. hi pastu et			<i>omitted</i> et <i>omitted</i>	pascuis uel (<i>Digest</i>)
9. armentis	fermentis			uel ex armentis (<i>Hus.</i> <i>with Digest</i>)
quodammodo depraedantur abigendi	quod admodo abigei	uepraedantur abigei	quod ammodum abigei	abigendi (<i>Digest cor-</i> <i>rectly</i>). <i>Mommсен</i> <i>reads</i> abigei
10. exercent equos de gregibus	exercentes quas degere	exercentes quas degere	exercentes quas degere	exercentes equos de gre- gibus (<i>Digest</i>)
11. abducentes ceterum si		adducentes et cetera idem si		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 114— <i>cont.</i>				
12. equum relic- tum in soli- tudine abduxerit abigeus	equum in soli- tudinem	equum in soli- tudinem adduxit	equum in soli- tudinem abduxit ambigeus	equos in solitudine re- lictos (<i>Digest</i>), equum in solitudine (<i>Mom.</i>)
13. fur potius et porcum uel capram uerbecem abducunt	 berbicem adducunt	potius fur <i>omitted</i> et capram berbicem adducant	 <i>omitted</i> berbicem	 porcam (<i>Digest</i>) uerbecem (<i>Mom.</i>), uer- uecem (<i>Digest</i> , <i>Hus.</i>) abduxit (<i>Digest</i>) quam (<i>Digest</i>)
14. ut hi qui abigunt plecti	ut his qui ad abigent	abigent (a) pecti	ambigent	
15. poenam [item] tem- porari	poena item operibus	item operibus	item operibus	temporari (<i>Mom.</i>), iter operis (<i>Digest</i>), iter (temporarii) operis (<i>Hus.</i>)
16. gladii praestituerit honestiore	presto erit honestiori	gladii grandi presto erit honestiori	prestiterit honestiori	praestituerit (<i>Digest</i>) honestiore (<i>Digest</i>) honestiori (<i>Hus.</i>)
17. hanc poenam aut rele- gandi	hac poena	etiam relegandi	p(o)ena etiam ut relegandi	
18. remouendi ordine Romae ta- men etiam bestiis subici	ordinem R. t. e. b. s.	ordinem R. tam e. b. s. (a. subici <i>omit-</i> <i>ted</i>), (b. abici)	ordinem R. t. e. b. obici ab. uideamus et	mouendi (<i>Digest</i>) ordini (<i>Digest</i>) } <i>omitted in Digest</i>
19. abigeos ui- demus et abigunt inique	ab. uideamus et iniqui	ab. uideamus et	 obiciunt	
20. hac poena adficiuntur				bestiis obiciuntur (<i>Digest</i>)
23. dicit exierit	exiuit	di*it		
24. uel spicas aut aestimationem restituēt ille	existimationem	uel ei ille	aut spicas existimationem restituāt	uel (<i>Hus.</i>)
26. Paulus libro sententiarum [quinto] sub titulo	Paulus liber sententiarum sub titulo (sub- dit <i>index</i>)	paulus libro sententiarum sub titulo	} <i>omitted</i>	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 114— <i>cont.</i>				
27. casam aut uillam gratia	casa pillam gratiam	cauca (<i>a</i>) au pillam gratiam		
28. metallum	metallo			
29. honestiores insulam	insula	honestiores uero		
30. furentis incuria ignem agros	fuerint his incuriam agrus	incuriam agri	incuriam ignis	ferente (<i>Paul.</i> , <i>Hus.</i>)
31. si ex eo uinea oliuae fructiferae	et si oliua	et si uineas oliueta fructiferas	et si uineas oliuas	si (<i>Paul.</i>) ex eis (<i>Hus.</i>) uineae (<i>Hus.</i>) oliuae (<i>Paul.</i>)
32. concremen- tur aestimatione sarciaur	extimationem	concrementum	(<i>a</i>) concreman- tur extimationem resarciaur	
PAGE 116.				
1. Paulus eo- dem libro et titulo		} omitted		
2-3. noxae 3. deditione sarcitur messium per dolum	noxae et editione perdum	nos edictionem mensuum perdunt	nos et edictione perdum	sarciaur (<i>Paul.</i>) per dolum (<i>Paul.</i> , <i>Vesont.</i>)
3-4. uinearum				uel uinearum (<i>Hus.</i>)
4. aut in			in	
6. titulo qui supra		tituli	omitted	
7. incendia si qui	incendiarii quidquid	incendiarii quicquid	omitted quidquid	incendia si qui (<i>Hus.</i>) incendiarii qui quid (<i>Mom.</i>) omitted (<i>Paul.</i>)
causa facile		causam		
9. Ulpianus libro octauo proconsulis [sub titulo]	octauo (<i>omitted</i> <i>in index</i>) et consulis (<i>index</i>) omitted	} omitted		omitted proconsule omitted

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 116— <i>cont.</i>				
10. naufragis incendiariis	naufragiis Incendiariis	naufragiis Incendiariis	naufragiis Incendiariis	naufragis (<i>Hus.</i>)
11. Incendiariis interdicti iussit	(only once) (a) interdictit	(only once) interdic iussi	(only once) iussi	
12. re uarie	uariae	(b) res uarie (a) res uali*ae	restituariae	uarie (<i>Hus.</i>)
puniti	(a) ponitionum (b) punitonum			
ciuitate			ciuitatem	
13. fecerunt, si humillimo sunt bestiis subici	si in subici	ueticii subici	si in humili modo subici	fecerint (<i>Digest, Hus.</i>) humiliore (<i>Digest, Hus.</i>) sint (<i>Digest, Hus.</i>) obici (<i>Digest</i>)
14. aliquo gradu fecerunt puniuntur	grado puniri	alico puniri	puniri	fecerint (<i>Digest, Hus.</i>) puniuntur (<i>Digest</i>) puniendi (<i>Blume</i>) puniri (<i>Hus.</i>) <i>Hus. supplies</i> deport tionis poena. <i>Mon</i> <i>leaves blank space</i> <i>Digest has in insula</i> <i>deportantur. Cujas has</i> <i>exilio uel deportationis</i>
14-15. aut certe				
15. [deportationis poena] adficiendi				ei (<i>editions</i>) fecerit (<i>Hus.</i>) <i>Mom. would prefer</i> <i>in causa lata</i>
eis	et	et	et	
16. fecerint		fecerunt		
17. in lata et incauta lasciuiam		lasciuam		
18. Paulus libro singulari paganorum	Paulus libro (liber index) singulari paganorum (index), pagano R (text)	} omitted	omitted	
20. causa id admiserint		ad eam miserint	cause	id admiserint (<i>Blume</i>) admiserint (<i>Hus.</i>)
21. puniantur casu uillam ex inimicitia	puniatur inimicitia		puniatur casum uilla	
22. fortuita enim remittenda	remitenda	enim fortuita remittendi	in fortuita enim	
23. uicinis	uicini		uinis	
24. Ulpianus libro xviii ad edictum, sub titulo	ulpianus libro (liber index) xviii (index, omitted in text) ad edictum sub titulo	U. l. xviii ab edicto sub tituli	} all omitted, except Ulpianus, which is placed after occisum esse in line 25	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings,
PAGE 116— <i>cont.</i>				
24. iniuria	iniuriam	iniuriam	iniuriam	
25. occisum cum diceret	(a) occiso cum doceret	cum doceret	cum docere	
26. item si insulam meam adusseris incenderis Aquiliae	insula adusseris	in insula mea aduserit incenderit aquilia	id si insula mea aduseris aquilia	
27. actionem habebo idemque et si uillam	accione idemque (<i>index</i>) itemquae (<i>text</i>)	accione abeo itemquae ex	abeo itemquae et uilla	
PAGE 118.				
1. meam insulam exuserit etiam poena	insula exuserit poenam		mea insula exurerit ex etiam	
2. plectitur		flectetur	plectetur	
3. item item (<i>text</i>) insulam exurere	idem (<i>index</i>) insula (<i>index</i>)	idem	item	item omitted in Digest
4. Aquilia lege uicino	uicini		aquilie	meam exurere (<i>Digest</i>) lege omitted in Digest etiam uicino non minus etiam (<i>Digest</i>)
5. inquilinis ob		sub	inaquilini sub	inquilinis tenebitur (<i>Digest</i>)
5-6. et ita Labeo libro xv res- ponsorum refert.		et ita Labeo resp. xv. re- ferret	et ita Labeo responsurum v. refert	omitted in Digest et ita L. xv resp. refert (<i>Blume</i>)
7. sed si stipulam incenderis euagatus	incenderit	sed omitted incenderit euacuatus	sed omitted stipula	
8. praedium illud exusserit Aquilae	proelium exusserit aquiliae	aquiliana	illum exurerit	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 118— <i>cont.</i>				
9. habeat an in factum quaestio,	quaestio	habet tam in facto quaestiones	in in facto quaestionis	quaestionis (<i>Hus.</i>)
10. sed	sed	et	et	
10-11. et ita Celsus	(et ita celsius	et ita celsius . .	de stipula in-	
11. libro .xxxvii digestorum scribit ait enim si	<i>index</i>) (deges- torum <i>index</i>)		cententis cel- sius	
		<i>omitted</i>	<i>omitted</i>	
12. incendit effugit eum non	fugit <i>omitted</i>	incendentes offugit <i>omitted</i>	effugerit	effugerit (<i>Hus.</i>)
13. exussit	exussit		exurit	
14. aliud egit processit	aliud legit precessit *	alius legit pr(a)ecessit	aliud legit pr(a)ecessit	* indicated by Momm- sen pr(a)ecessit in the MSS.; not so in the Berlin Codex
15. sententia et rescripto diui Seueri	sit rescriptum	sententiam scit	sit rescriptum diui seuerit	
16. profitere [qui] pabuli	profiteri <i>omitted</i> babuli	profiteri <i>omitted</i>	profiteri <i>omitted</i>	<i>omitted</i> (<i>Hus.</i>) qui (<i>Hus., Scal.</i>)
17. culpa seruorum Veturiae Astiliae	uecturiae	culpas eorum	culpam seruorum	
17-18. euagatus.. Aquiliae	aeuacatus	beturiae artiliae { <i>omitted</i>		
18. noxali		noxiri	noxalii	
19. actura si iudicium consistere potest	acturas si iudicium cum adire potest	auctoras si iudicium kp. cii idem adhire potest	actoras si iudicium cum adire potest	acturas (<i>Hus.</i>) iudicium consistere po- test (<i>Mom.</i>); he also suggests iudicem tum adire potes. iudicium cum ea edere potes (<i>Hus.</i>)
20. uisa	uisu	uisum	uisum	uisum aquiliam (<i>Blume.</i> <i>Hus.</i>)
21. fornacarius				fornacarius (<i>Digest</i>) forte seruus (<i>Mom.</i>)
servusue aedium con- ductoris	quae idem con- ductores	quae eidem con- ductores	quae idem con- ductores	qui idem conductor est (<i>Mom.</i>) <i>omitted</i> in <i>Digest</i>), seruusue aedium conductoris (<i>Hus.</i>)
coloniue		colonia		coloniue (<i>Hus.</i>), coloni (<i>Mom.</i>)
22. obdormisset	obdormissent	obdormissent	obdormissent	obdormisset (<i>Digest</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 118— <i>cont.</i>				
22. neratius ex	muneris	munerari	munerari et	neratius (<i>Digest</i>)
23. locato conuentum in elegendis	loca conuentu in legendis	locata in eligendis	locata conuentu neglegendis	in elegendis (<i>Digest</i>)
24. fuit ceterum subiecerit	fuit tenetur ceterorum subierit	ceterorum	ceterorum	ceterum (<i>Digest</i>)
25. [an] tenetur namque non	tenetur	tenetur	tenetur	an tenebitur qui sub- iecerit (<i>Digest</i>) nam (<i>Digest</i> , <i>Hus.</i>) <i>omitted in Digest</i>
26. nihil qui	si nihil hic qu(a)e	nihil qu(a)e	si nihil qui	nihil (<i>Digest</i>) qui (<i>Digest</i>)
26-28. quem ad- modum si hominem <i>till</i> cessat		si hominem (<i>omitted</i>)		quem cessat (<i>omitted in</i> <i>Digest</i>)
28-29. et hic puto ad exem- plum aequi- liae dandam actionem		et h. p. ad. ex- emplo a. dan- dam actionem		puto utilem competere actionem (<i>Digest</i>)
29. tam in ad	tamen <i>omitted</i>	tamen <i>omitted</i>	tamen	tam in (<i>Digest</i>)
30-31. obdormiuit uel neglegen- ter custodit, quam in me- dicum qui neglegenter curauit, siue homo periit siue debili- tatus est	obordimiuit (c. q. i. m. q. neglegenter <i>omitted</i>)	obdormit et <i>instead of</i> quam	obdormit et <i>instead of</i> quam	} quam in eum, qui neglegenter custodiit (<i>Digest</i>)
PAGE 120.				
1. nec eo obdormiuit humanam	ne (b.) humana	obdormiit humaria	ne eum obdormiit	
2. uel ita			uelit	
3. ut non eua- garetur	u. n. euacaret	u. n. euaderet	u. n. euacaret	ne euagetur (<i>Digest</i>)
3-4. item libro vi ex Vibiano relatum est	item (idem <i>in-</i> <i>dex</i>) l. vi. ex uiuiano rele- gatum est	item libro ui ex uiuiano rele- gatum est	} <i>omitted</i>	<i>omitted (Digest)</i>
4. furnum	fornum	fornum		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 120— <i>cont.</i>				
5. iniuria teneris et ait [Pro- culus] agi non posse Aquila lege quia	et agit non pos- set id.	iniuriam teneres et aut agi (a ^a *) non posse id	iniuriae et ait agi non possem id qui	tenearis (<i>Digest</i>) et posse (<i>Digest</i>) et posse tecum (<i>Hus.</i>) aquilia lege (<i>omitted in Digest</i>)
6. et aequius putat	<i>omitted</i> aequium	aequum	aequium	aequius (<i>Digest</i>), aequum (<i>Hus.</i>) puto (<i>Digest</i>)
7. sed non pro- ponit exus- tum parie- tem				scilicet si paries exustus sit (<i>Digest</i>)
7-8. sane enim quaeri potest				} sin autem (<i>Digest</i>) sed (<i>Digest, Hus.</i>)
8. [si] dederis et	<i>omitted</i> dederit	<i>omitted</i>	<i>omitted</i>	
9. habeas metuam mihi des an	habeat motuam de te	<i>omitted</i> de te	de te	damnum des (<i>Digest</i>), detur (<i>Hus.</i>) <i>omitted in Digest</i>
9-11. aequum <i>till</i> dixerit				
9. interim actionem	inter	inter actionum	inter	interim (<i>Pith.</i>)
10. id est inpetrare fortassis	idem imperare (<i>index</i>)	idem fortasses	idem	id est (<i>Pith.</i>), <i>omitted by Hus.</i> infecti puto (<i>Digest</i>)
11. non facti				
12. qui exusserint libro x Urseius refert	quis exuserit	quis excusserint urbs eius	quis exurerit <i>omitted</i> urbis eius refere	
13. Sabinum lege Aquilia	sauinum	sauinum legem aquiliam		
14. noxali conuenien- dum locato	nox ab tolcato	noxiali inueniendum togato	togato	
15. negat autem respondit uillam	R	debet <i>omitted</i> illam		<i>omitted in Digest</i> ait (<i>Digest</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 120— <i>cont.</i>				
16. exusserint locato uel lege teneri	exuserint lege <i>omitted</i>	exuererint tenere	exurerit locatum tenere	exussissent (<i>Digest</i>) uel ex lege (<i>Digest</i>)
17. seruus posset dedere esset	seruus posset dederit	seruum posse <i>omitted</i>	seruum posset	possit seruus (<i>or seruum</i>) (<i>Digest</i>)
18. altero agendum item Celsus	(<i>a.</i>) agendo idem (<i>index</i>) celsius (<i>index</i>)	alterum idem celsius	idem	
19. digestorum scribit apes aduolassent	degestorum (<i>index</i>)	degestorum <i>omitted</i> reuolassent	scripsit	
19-20. tu eas	totas	et totas	totas	tu eas (<i>Digest</i>)
20. exusseris quosdam negare competere legis Aquilae actionem	exuserit	eiusserint quosdam necare competere aquilae legis actionem	et iusserit quodamni negari	} <i>Digest has instead</i> legis aquiliae actionem competere
21. inter quos et proculum		inter quos et proculus		
22. falsum esse Celsus ait reuenire soleant fructui	euenire	celsius est eueniri solent	euenire fructum	
23. mihi sint eo mouetur	missi sunt	sunt commouetur	sunt eum mouetur	
23-24. ita clausae			ita cluse	cista clausae (<i>Hus.</i>)
24. fuerint Celsus	<i>after</i> fuerint, hđ. (= hic deest)	(<i>b.</i>) celsius (<i>a.</i>) cels ***	celsius	
25. manum	manu	manu		
28. dicit		dixit		
29. transmouebis terminos quos constituerunt	constituerunt	transibis terminum posuerunt	quam statuerunt	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 120— <i>cont.</i> 30. uel		<i>after</i> uel quem constituerunt <i>inserted</i>		
PAGE 122. 1-2. Paulus libro sent.[primo] sub titulo finium re- gendorum	P. liber sent. (primo <i>omit- ted</i>)	(primo <i>omitted</i>) (titulo <i>omitted</i>) regendorum	(primo <i>omitted</i>) regendorum	
3. eum per terminos deiecit amouit	<i>omitted</i> terminus	eis <i>omitted</i> terminum deiecet ² mouit	eis <i>omitted</i> terminus	per (<i>Paul.</i>)
4. anima aduer- titur		animaduertit	animaduertatur	animaduertitur (<i>Hus.</i>)
5. Ulpianus libro octauo	U. liber (<i>index</i>), octauo (<i>index</i>) VIII (<i>text</i>)	} <i>omitted</i>	} <i>omitted</i>	IX (<i>Hus.</i>)
5-6. de officio pro- consulis sub titulo de ter- mino moto	de o. p. s. t. de terminio m.			
7. eos terminos mouerunt inpune debere	terminus	terminum amouerunt impoenae debent	de eo terminum	terminum (<i>Hus.</i>)
8. k. Sept. se consule	klr. septembri- arum	(a.) klr. septem- briarum (b.) kl. decb. et sept. <i>omitted</i> consuli	klr. septembri- arum re consul	
9. rescripsit quo statuit rescripti	rescripta	rescripsi que statui	rescripsi quod	
10. se pessimum factum finium	sed	finiunt		quin pessimum factum (<i>Digest</i>)
11. causa positos abstulerunt dubitari	causam	causas	posito abstulerint dubita	propulerunt (<i>Digest</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 122— <i>cont.</i>				
11. poenae tamen	poenae eam	poenae eam	poenae ea	poenae autem (<i>Hus.</i>)
12. modus ex condicione facientis magis statui	magistratui	modo se conditionem facientes magistratui	modos ex facientes magistratui	de poena tamen (<i>Digest</i>)
13. potest nam si	poenam	poenam	poenam uariam statuit uerba rescripti re- peated before si	} magis statui potest nam (<i>Digest</i>)
sunt personae				
14. non dubito quin occupandorum aliorum causa admiserint	con dubito quin (a) aliurum	non dubito quis causam amiserint	non dubito qui non cubandorum causam admiserunt	non dubito quin (<i>Mom.</i>) non dubie (<i>Digest</i>) alienorum (<i>Digest</i>) admiserunt (<i>Digest</i>)
15. in cuiusque pa- titur aetas relegari	<i>omitted</i> cuiusque cum patitur	cuiusque com patitur eptas relegaris	cuiuscumque patitur et	cuiusque patiatur (<i>Digest</i>)
15-17. id est... castigari	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	id est...-castigari <i>sup- plied from Digest</i>
17-18. et sic... dari				et ad opus biennio dari (<i>Digest</i>)
18. si aut		<i>omitted</i>	nisi	
18-19. fortuito	fortuitu	fortuitu		
19. usus causa sufficit coerceri	uisus causa quoherceri	uisus causa cohercerent	uis causa	usus causa (<i>Pith.</i>); <i>omitted in Digest</i> sufficiet (<i>Digest</i>) decidere (<i>Digest</i>)
22. quemquam Israhel		quemqua israhelitam		
23. uendiderit morte moriatur	uindederit	mortem moriatur	<i>After moriatur is inserted interpretatio plagiarius (sic) est qui homi- nem liberum rapit et uendit</i>	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 122— <i>cont.</i>				
24. Paulus libro titulo Fabiam	liber fabiani	idem paulus tituli		
25. Lege Fabia Romanum ingenuum	id manum ingenuus	<i>omitted</i>	<i>omitted</i> id manum ingenuus	
25-26. liberti- numue	libertinum	libertinum	libertinum	libertinumue (<i>Mom.</i>) libertinum (<i>Hus.</i>)
seruumue alienum		seruum uel	seruum uel alium	
26-27. compara- uerit		comparatierit		
27. poena nummaria	summaria	penam summaria	penam summaria	nummaria (<i>Cujas</i>)
28. translata praeffectum itemque	tranlata pr(a)efecto idemque (<i>index</i>)	pr(a)efecto	pr(a)efecto	praefectos (<i>Hus.</i>)
PAGE 124.				
1. ordinem animaduersionem	ani Inaduer- sionem		ordine animaduersione	
2. aut metallum dantur cruce	ut damnentur	metallo	cruce	
2-3. honestiores	honestiorem			
3. adempta dimidia parte	dimidiam partem	adepti dimidiam partem	ademptum dimidiam partem	
in perpetuum relegantur	impp.	(a) redigantant (b) redigantur		
4. domino	dno (<i>text</i>) dominum (<i>index</i>)			
alienum seruum subtraxerit	<i>omitted in index</i> seruus (<i>index</i>)	subtraxerit		
5. in domino	an		dominum	
6. datur		dampnatur		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 124— <i>cont.</i>				
7. Ulpianus libro nono	Ul. l. viiii sub titulo		<i>omitted; after fabiam, ulpian- us is inserted (subtitulo omit- ted) de off. proconsulis</i>	Ulp. libro IV. (<i>Hus.</i>)
de officio pro- consulis, sub titulo	de off. procon- sule	subtituli de off. proconsulis		
9. legis Fabiae cognitio in		legem fabiam conditio	legem	
10. quamquam quidam Caesaris	cesari	<i>omitted</i> tamquam quidum cessari	quidum cesari	quamquam eam (<i>Hus.</i>)
11. tam in pro- uinciis quam Romae iam	quam romae tam in provin- tiis	quam romae tam in provin- ciis an	quam romae etiam in pro- uinciis	tam in provinciis quam Romae (<i>Mom.</i>), quum Romae tum in provin- ciis (<i>Hus.</i>)
12-13. super ea re	superare	super ea		
13-14. iniuria commissa	in uia	iu uia	in uia	iniuria (<i>Pith.</i>), in Fabiam commisum (<i>Hus.</i>)
14. praefectorum		praefectorem		
15. cognitio				<i>After cognitio Hus. supplies [in Italia] provinciis (Hus.) enim est (Blume, Hus.)</i>
provincia est nec	provinciam enim	provinciam enim	enim (<i>a.</i>) <i>omitted</i>	
16. procuratori caesaris iniungitur quam si praesidis	iniunguntur quam	percuratori necessariis (<i>sic</i>) iungitur quas praesidias	} procuratoriis quam praesidias	quam si (<i>Cujas</i>)
17. plane Fabia	plenae	fabiam	flabiam	
18. partes huiusce rei attamen	parte huiuscertae adtamen	(<i>a</i>) huiusce rei tamen (<i>b</i>) hu- iusemodi ta- men	parte huiusce rei et tamen	huiusce rei attamen (<i>Mom.</i>) Uice praesidis tamen (<i>Hus.</i>)
19. procurator nullam	procuratori illam	procuratori illam	procuratori illam	nullam (<i>Mom.</i>), illam (<i>Hus.</i>)
20. cognoscere tamen ut Fabia	fabiam	cognoscerent adtamen fabiam		cognoscere nequeat (<i>Hus.</i>)
21. imp. Antoni- nus consti- tuit		idem imp. Anto- ninus consti- tuit (<i>begin- ning a new chapter</i>)	<i>omitted</i>	
idem legis Iuliae		iuriae (<i>omitting idem legis</i>)	item (<i>omitting legis iuliae</i>)	item (<i>Hus.</i>)
22. adulteris constitutione	alteris		constitu ^o tionem	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 124— <i>cont.</i>				
22-23. quaestio- nem accepit	questionem accipit	questi nomen accepi		
23. lege autem Fabia		legem autem phariam		
24. eumue sit celauerit	eundemque	eundemque qui (a) celarierit	eiusdemque	eumue (<i>Pithou</i>), eun- denique (<i>Hus.</i>)
24-25. uinxerit uinctumue habuerit	uinxerit uinc- tumque habu- erit	et habuerit uinc- xerit uinctum	uinxerit uinc- tumque habu- erit	uinxerit uinctumque habuerit (<i>Hus.</i>)
25. quie eam			qui uel ea	
26. primo poena iniungitur	poenam	pro modo poenam ingungitur		<i>after iniungiturHuschke</i> <i>inserts sestertium</i> <i>milium</i>
27. quis sestertiis	qui sextertiis	qui rex certis	qui	quis (<i>Paww</i>); <i>Cuja</i> <i>deletes.</i> sestertium (<i>Hus.</i>)
PAGE 126.				
1. milibus punitur capite se- cundo	militibus punietur capite secundum	punietur secundo capite	punietur	
2. qui dominum		idem qui (<i>begin- ning a new chapter</i>) a domino		
3. seruum uendiderit	(a.) uendiderit		seruo	
4. populo sestertia	populus extertiam	populo sextertia dari	populos extertiam	sestertium (<i>Hus.</i>)
5. dare		est tamen		
6. tamen est capitali	capitulis ¹ capitalis ²		capitulis	
7. sententia plagiatores atrocitate puniendos		sententiam placiatores atrocitatem puniend (= puniendum)	atrocitatem	
8. metalli	metalli poenam	metalli poenam	metalli poenam	
9. reis inrogauerit	eis inrogauit	(a.) rei		
13. inueniatur in te		<i>omitted</i> ne		<i>Mom. suggests that</i> <i>should be inuenietur</i>
14. nec apud tollas consentias	apud tollat consentiat			

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 126— <i>cont.</i>				
14. uenenariis	uenerariis		uenenarias	
15. qui dicunt		qui dicunt <i>repeated</i>		
quid conceptum habeat mulier	coseptum mulieri	qui habet mulieri	habet mulieri	
16. intendas				attendas (<i>Hus.</i>)
17-20. [non inue- niatur inspiciens]				<i>This is another version of the preceding, and accordingly an inter- polation</i>
17. auguriator	auguriatur	(a.) augoriator (b.) augurator? uel	augoriator	augurator (<i>Hus.</i>)
nec				
8. pythonem habens in uentrem	pitonem habentem	phytonem <i>omitted</i>	pitonem	in uentre (<i>Hus.</i>)
9. nec haruspex	caruspex		<i>omitted</i>	aruspex (<i>Hus.</i>)
9-20. inspiciens			inspices	
21. qui propter enim abominaciones		pro	quid <i>omitted</i> obominaciones	
1-22. deus eradi- cabit	dē eradicauit	denses abdicant	denses abdicant	deus eradicauit (<i>Hus.</i>)
2. Chaldaeos a facie tua	caldeos a facie sua	chaldeos ad faciem tuam	chaldeos a facie sua	chananaeos (<i>Hus.</i>)
23. possides			possidebis	possidebis (<i>Hus.</i>)
24. auguria	uuguria (<i>sic</i>)			
PAGE 128.				
1. ulpianus libro vii de off. pr. sub titulo	ulpianus libro (<i>liber index</i>) vii	{ idem de tituli	{ <i>omitted</i>	
3. interdictum callida	interdictos	callidam		interdicta (<i>Hus.</i>)
4. obstinata persuasione	obstinacitate (a. obstanacitate) persuasio	obstinatam (a. opinatam) persuasionem	obstinata per- suasione	opinatae artis (<i>Hus.</i>) persuasio
nec interdici eis		quo interdicte his	interdicit eis	
5. sed uetus est		seductus haec	seductos	
6. Pomponio et Rufo cons.	P. et r. consules (<i>text</i>), pom- penio et ruffo consule(<i>index</i>)	pomponi et rufo consulibus	{ <i>omitted</i>	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 128- <i>cont.</i>				
6. cauetur ut	canetur	canetur et		
7. Chaldaeis simile incep- tum fecerunt	caldeis similem incertum	chaldeis similem incertum	chaldeis similem incertum	} simile inceptum fe- int (<i>Hus.</i>)
8. interdicatur eorum	interdicantur erum			
8-9. si externa- rum gentium quis id fecerit	sic eternus gen- tium qui si id fecerit	sicexternasgen- tium qui si id fecerint	sic externus gen- tium qui si id fecerint	
10. quaesitum scientia huiusmodi	quesito	scientiam huiusmohi	quesito	
11. [et] ueteres	<i>omitted</i>	<i>omitted</i> tere	<i>omitted</i>	
13. uariatum nec dissimu- landum inrepsisse	uariatum nam	uarietur nam (<i>a.</i>) dissimulatum	uaritur nam	nec (<i>Oiselius</i>)
14. sepraeberent	reprehenderent	repraeberent	repraeberent	
15. quidem contumaciam	contomaciam	si quidem	si quidem	
16. uisi				ausi (<i>Pith.</i>)
16-17. consulere uel exercere quam quod fuerat per- missum sae- pissime	consulere uel exercere quam qui fuerant p. s.	} <i>omitted</i>	consulere uel exercere (<i>a. er- cere</i>) quam qui fuerat p. s.	
17. omnibus	hominibus			
18. ineptiis se inmisceret	inmiscerent	inicerent	inneptiis se <i>omitted</i> (<i>a</i>) inmiserent	immisceret (<i>Hus.</i>)
19. puniti ii	punit hii	id	poniti hi	hi (<i>Hus.</i>)
qui id exercuerint mensura scilicet	quid exercuerunt scilicet et	quid mensuram		exercuerunt (<i>Hus.</i>)
20. qui de salute		quidem solute	quidem solute	salute (consuluere <i>adu-</i> by <i>Hus.</i>)
21. qua alia	qualia	qui alia		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 128— <i>cont.</i>				
21. enim qui de sua	quidem suasorumque	ens quidem uario- rumque	quidem suaro- rumque	qui de sua suorumque (<i>Iac. Gothofred</i>)
21-22. suorumque			habenter	qui habentur (<i>Hus.</i>)
22. habentur	quam uaticina- tores hii quoque plecten- di sunt qm̄ nonnum- quam	quam <i>the rest</i> <i>omitted</i>	quam (<i>a.</i> beati- cinatores) (<i>b.</i> baticinatores)	uaticinatores quam-
22 23. uaticina- tores, quam- quam ii quo- que plecten- di sunt, quo- niam non- numquam			hi quoque plectendi sunt quoniam non umquam	quam ii quoque plecten- di sunt quoniam nonnumquam (<i>Mom.</i>), u. hi quoque p. s. qu. nonnumquam) (<i>Hus.</i>)
24. quietem	(<i>a</i>) quaetem			
25. denique decretum diui Pii Pacatum	pacatum (<i>text</i>) pactum (<i>in- dex</i>)	digestus idem pactum	enimque decertum pactum	
26. Lugudunen- sis rescripti	lugdunensis	(<i>a</i>) lugdunensis (<i>b</i>) lugdonensis rescripto	lucudinensis rescripto	lugdunensis (<i>Hus.</i>)
27. subieci denique	subiecit		subiecit	denique et (<i>Hus.</i>)
28. Cassiano uaticinatus instinctu	extinctum	cassiano betiginatus extinctu	casanio beatiginatus extinctum	
29. insulam inpune	insula		inpuni	
30. homines obtentu ex monitu	hominis obtentum et monitu	obtentum et monitum	obtentum et monitu	ex monitu (<i>Mom.</i>); monituum (<i>Lenel</i> , <i>Palingnesis</i> , <i>Ulpianus</i> fr. 2192), (<i>Hus.</i>)
31. enuntiant confinunt	renuntiant eos fingunt, (<i>ad- dition on mar- gin by a later hand</i> confin- gunt on <i>Mommsen's</i> <i>authority, un- decipherable</i> <i>in MS.</i>)	eos fingunt	eos fingunt	eos fingunt (<i>Hus.</i>)
PAGE 130.				
1. Gregorianus libro vii sub titulo de maleficis et 1-2. manichaeis	Gregorianus liber vii de maleficis et manichaeis sub titulo	} <i>omitted</i> de maleficis et manichaeis (sub titulo <i>omtd.</i>)	Gregorianus libro vi de maleficis et manichaeis sub titulo	G. 1. xiii (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 130— <i>cont.</i>				
3. Impp. Diocletianus et maximianus AA. [et Constantius] et	comp maximus dioclicianus et maximianus nouelissimi aa	imperatoribus maximianus diocletianus et maximinus nobilissimi aaa	imp maximianus diocletianus et maximus nobilissimi aaa	impp. Max., Dioc. maximinus nobilissim AAA. Iuliano (<i>Hus.</i>)
4. maximianus nobilissimi [CC] proconsuli otia	proconsule		etiam	
5. incommodioris	in communionem	in communionem	in communionem	incommodioris (<i>Hus.</i>) in communione (<i>Mom.</i>)
6. humane modum	hominem	modo		
7. ac superstitionis ut	hac			superstitiosis (<i>Hus.</i>)
9. sed dii immortales ordinare et	et sedi immortale ornare	redde immortalis ornare <i>omitted</i>	et redde	
10. dignati ut	et	dignitati et	et	ut (<i>Cujas</i>)
11. et egregiorum uirorum		egregiorum	egregiorum	uirorum [ore] (<i>Hus.</i>)
12. inlibata statuerentur obuiam		in inlibata	statuarentur ouiam	
14. deberet retractare	debere sed tractare	debere	debere	debet (<i>Hus.</i>)
14-15. ab antiquis				ab antiquitate (<i>Hus.</i>)
15. statuta suum cursum	tractata sunt crusum	sunt	sunt crusum (a.) ingens enim	suum (<i>Pithou</i>)
17. ingens				
18. et sectas ueterioribus ut	ex rectas deterioribus	ueteribus	rectas ueteribus idem ut (<i>beginning a new chapter</i>) per	ueteribus (<i>Hus.</i>) ueterioribus (<i>Cujas</i>) ui (<i>Hus.</i>)
19. pro prauo excludant diuinitus	prauum diuinitas			excludunt (<i>Hus.</i>)
19-20. quondam	quoniam	quoniam	quoniam	quondam (<i>Cujas</i>)
21. manichaei audiuius ueluti [et]	manicheus audiuius uelut <i>omitted</i>	manicheos audimus	manicheus audimus	manichaeos (<i>Hus.</i>); manichaei (<i>Mom.</i>)
22. Persica			perfida	et added by <i>Mom.</i> ; [<i>Hus.</i> adds a
23. committere populos	populus	committeret populus	populus	
24. perturbare	perturbaret			
25. inserere adsolet		(a.) solent (b.) asolent		inferre (<i>Pith.</i> , <i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 130— <i>cont.</i>				
26. accedenti conentur [per] execrandas consuetu- dines	accendenti	conueniatur et grande consuetudinem	conuentur et grandes	per <i>added by Pith.</i> } execranda consuetu- dine et scaeva lege (<i>Hus.</i>)
26-27. et scaeuas leges	et istebas	et seuas	et issceuas	
27. innocentioris		innocentiores		
27-28. Romanam gentem	romana gente			
28-29. uniuersum orbem nos- trum		uniuersam ur- bem nostram		
29. de suis ma- liuolis inficere et	infigere	infigere hec	infigere	} <i>de deleted by Pith.</i> , in- ficere (<i>Cujas</i>), anguis maliuoli inficere (<i>Hus.</i>)
30. prudentia tua relatione	relationem	relationem	prudentiam tuam	
31. statutis	statutis	statutum	statuti	statuis (<i>Lach.</i>), statuunt (<i>Hus.</i>)
euidētissime sunt	euidētissi- morum	euidētissi- morum	euidētissi- morum	euidētissime sunt (<i>Mom.</i>), euidētissi- morum (<i>Hus.</i>)
exquisita et inuenta	et ad inuenta	acquisita et inuenta	acquisita	inuenta (ac) (<i>Hus.</i>)
32. aerumnas illis	eorum maenas illi	illas	illi	illis (<i>Schult.</i>)
PAGE 132.				
1. ac	ad			
2. poenae ita ut	poena	poena	poena aut	
3. consentaneos adeo	ad eos	ad eos	consentaneus ad eos	consectaneos (<i>Hus.</i>) adeo (<i>Pith.</i>), aduersus de (<i>Hus.</i>)
4. bona		nomen a		
5. qui	quis	quis	quis	
6. maiores personae [ad]adhuc	maioris adhuc	maioris personam adhuc	maioris	maioris (<i>Hus.</i>)
7. sectam	secutam	secuta	ad hunc secta	ad adhuc (<i>Mom.</i>), ad hanc (<i>Hus.</i>)
8. transtulerint	transtulerunt	transtulerunt	transtulerint	
9. facies ipsos quoque phaenensi- bus	forensibus	facias ipsi quoque forensibus	ipso quoque forensibus	ipsosque (<i>Hus.</i>) phaenensibus (<i>Pith.</i> and <i>Schult.</i>). Cf. <i>Theodoret Hist.</i> Eccl. 4, 22, de <i>Chris-</i> <i>tianis Alexandrinis.</i> Foenensibus (<i>Hus.</i>) proconensibus (<i>Hus.</i>)
Procon- nensibus	proconensibus	proconensibus	praeconensibus	
10. stirpitus lues	strepitus malis	mali	mali	lues (<i>Mom.</i>), mala (<i>Hus.</i>)
10-11. nequitiae de saeculo		nequissi de hoc saeculo		} nequitia de saeculo (<i>Hus.</i>)
12. maturet	maturius	maturius	maturius	maturius (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 132— <i>cont.</i>				
12. obsecundare dat. prid. k.		obsecundari		o. ne cunctetur (<i>Hus.</i>)
13. Alexandriae		<i>omitted</i>	} <i>omitted</i>	
16. sic		(<i>α.</i>) <i>omitted</i>		
17. salfad moysen	salfade moyses	salphad	salpadae moysē	salfadae (<i>Hus.</i>)
17-18. sacer- dotem	Eleazarum	(<i>α.</i>) eleanorum sacerdotes	sacerdotes	
18. principes omnemque senatum	principem omnemque senatu	atque omnem	atque omnem	atque omnem (<i>Hus.</i>)
20. deleatur	deleantur			
21. de medio tribus suae masculus	de medio tribus sua	de media tribu sua; (<i>α.</i>) et ideo non deleatur no- men patris nos- tri <i>repeated</i> <i>after</i> masculus	de media tribu sua	
22. fratrum patris	patri	fr̄m		
PAGE 134.				
1. petitionem coram deo	domino dō		petitiones domino deo	{ coram deo (<i>Blume</i>) { domino deo (<i>Hus.</i>)
dominus Moysi		moysen salphad	<i>omitted</i> moyses salpad(a)e	salfadae (<i>Hus.</i>)
2. salphad	salpad(a)e			
3. medio dices	medium dicimus		dicis	
4. et filium	filius	<i>omitted</i> filium	filius	filios (<i>Hus.</i>) <i>After</i> habuerit <i>much</i> <i>has fallen out from</i> <i>the text. Hus. sup-</i> <i>plies</i> dabitis heredi- tatem eius filiae eius. Si filiam non habuerit, dabitis fratribus eius. Si fratres non habuerit dabitis patruis eius. Si patruos non habue- rit.
6. proximo	proximum			
7. filiis	filios			
8. secundum quae		sicut		
9-11. Gaius in- stitutionum libro iii legitimas sic ordinat successiones intestatorum	libro iii insti- tutionū kp. dcccxviii gaius institutionū lib iii legiti- massicordinat successione statutorum	libro iii institu- tionum kp. cxxxiiidemgaius institutionum libro iii legiti- mas sic ordi- nata succes- siones testa- torum	libro tertio in- stitutionum kp. cxxvi de successione inter fratres gaius	
11. lege				ex lege (<i>Just. Inst.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 134— <i>cont.</i>				
12. pertinent sui existimantur	si	(b.) peruenient si estimantur	si extimantur	
13. morientis fuerunt filiaue nepos	fuerint filia uel nepus	morienti filia uel	fuerint filiaue uel nepus	fuerint (<i>some codices of Just. Inst.</i>)
14. neptisue [ex filio] prone- pos filio nato	neptisue pronepus	<i>omitted</i> uel filio	neptisue proneptus natu	neptisue ex filio prone- pos (<i>Just. Inst.</i>) ex filio (<i>Just. Inst.</i>)
15. prognatus interest [sint]	prognatos interesse <i>omitted</i>	interesse <i>omitted</i>	prognatos interesse <i>omitted</i>	interest utrum (<i>Just. I.</i>) sint (<i>Just. Inst., Hus.</i>)
16. adoptiui nepos neptisue	adoptibi nepus		nepus neptimue	
16-17. pronepos proneptisue	pronepus pro- nepotesue (a.) pronepote suo	pronepotes pro- neptesuae	pronepus pro- nepteue	
18. [in potestate ... acciderit]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	in potestate ... acciderit (<i>Just. Inst.</i>)
19. ratione ueluti id	 idem	rationem ueluti emancipationem idem	 idem	 id (<i>Just. Inst.</i>)
20. quisque moriatur sit nepos	 nepus	 sint	 sint nepus	quis (<i>Just. Inst., Hus.</i>) moreretur (<i>Just. Inst.</i>) moritur (<i>Hus.</i>)
21. non idem et ceteris liberorum	idem ex ceterorum " (<i>index</i>) librorum (<i>index</i>)	<i>omitted</i> ceteri		item et (<i>Hus.</i>)
22. intellegimus manu			manum	intellegemus (<i>Just. Inst.</i>)
22-23. est [ei cu- ius in manu est] sua he- res est	eius estis sua heres est	eius est ualere et	eius est in sua heres est	eius, qui moritur est, ei sua heres est (<i>Hus.</i>) est [ei cuius in manu est] sua heres est (<i>Mom.</i>)
23. loco 23-24. item nurus quae in filii manu est	item nurus qu(a)e in filii manu est	in loco <i>omitted</i>	locus item nurus quae in filii manus est	
24. nam et haec neptis loco est	nec et h(a)ec nep- tis loco est		nam et haec neptis loco est	

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 134— <i>cont.</i>				
25. [si] manu sit cum	<i>omitted</i> manus eius dum	<i>omitted</i> manu eius dum	<i>omitted</i> manu eius cum	si (<i>Hus.</i> , <i>Mom.</i>) m. est cum p. moritur
26. pater moritur sit idemque dicimus	p. moritur	p. moritur (b.) morituri idem <i>omitted</i>	p. morituri sunt idemque	(<i>Hus.</i>) dicemus <i>is required</i> dicemus (<i>Hus.</i>)
27. [in] nepotis manu causa sit quia proneptis	<i>omitted</i> nepotes (<i>index</i>) causa sit quae a proneptis	<i>omitted</i> manum causa ita proneptis	de causa sit quae a proneptis	
28. [qui]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	qui (<i>Just. Inst.</i>)
29. futuri sui	futuris	futuris sibi	futuris sibi	
PAGE 136.				
1. nomine Aelia	nomina	nomina helia	nomina	nomine (<i>Pithou</i>)
2. ex senatus con- sulto	senatum con- sultum	<i>omitted</i> senatus consul- tus	senatus consulto	
2-3. [probatur. ...causa]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	probatur causa (<i>Gaius</i>)
4. [quod] et eo filio secundae mancipatione	<i>omitted</i> secundae aemancipationem	<i>omitted</i> officio secundae emancipatione	<i>omitted</i> secundae mancipatione	quod (<i>Gaius</i>), quod etiam (<i>Hus.</i>) etiam (<i>Gaius</i>) secundae (<i>Gaius</i>) mancipatione (<i>Gaius</i>)
5. manumittitur intellegemus	manum mittitur intellegimus	manum mittitur ille legitimus	manum mittitur intellegimus	
6. [igitur] filiis nepotes nep- tesue	<i>omitted</i> filiis nepotesuae	<i>omitted</i> nepote nepteue	<i>omitted</i> filiis nepotesue nepte	igitur (<i>Gaius</i>) nepotes neptesue (<i>Gaius</i>)
7. extant gradu propior	existent gradum propium	existente gradum proprium	existent gradum proprio	extant (<i>Gaius</i>), extant (<i>Hus.</i>) propior (<i>Pith.</i>), pro- ximior (<i>Gaius</i> , <i>Just.</i> <i>Inst.</i> , <i>Hus.</i>)
8. ulteriorem aequum uidetur	ulteriore et quam uidetur	cum uidentur	ulteriore ecum uidetur	aecum (<i>Gaius</i> , <i>Codex</i> <i>Veronese</i>) uidetur (<i>Just. Inst.</i>), uidebatur (<i>Gaius</i> , <i>Codex Veronese</i> , <i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 136— <i>cont.</i>				
8. neptesue			uenep̄te	
9. patris sui locum	patri sui loco			
pari ratione	patri rationem	rationem		
10. nepos neptisue ex et ex nepote pronepos	nepus (<i>a.</i>) sed ex <i>omitted</i> pronepus		nepus neptisuae et	
11. uocantur				omnes uocantur ad hereditatem (<i>Gaius</i> , <i>Veronese C.</i> ; <i>Hus.</i>)
12. quia nepotes neptisue item proneptisue	nepotes nepotes- uae idem (<i>index</i>)	qua nepotis nepote sua	qua	
13. patris esse uisum est	patri <i>omitted</i>	esse uisus est	proneptisue patri esse uisus est	parentis (<i>Gaius</i> , <i>Just.</i>) esse uisum est (<i>Gaius</i>)
14. sed stirpes hereditates	stirpem hereditatis	stirpe hereditatem	et stirpes hereditatis	stirpes (<i>Gaius</i>) hereditates (<i>Gaius</i>), here- ditatem (<i>Just. Inst.</i> , <i>Hus.</i>)
diuidi ita	diuidit	diuidi	diuidit	diuidi ita (<i>Gaius</i>), diuidi (<i>Just. Inst.</i>)
14-15. dimidiam partem			(<i>a.</i>) dimidiam (<i>omitting partem</i>)	partem dimidiam (<i>Gaius</i> , <i>Just. Inst.</i> , <i>Hus.</i>)
15. ferat [et]	fruat	fuerat	fuerat	ferat et (<i>Gaius</i>)
16. alteram		aliam		
16-26. item si ex <i>till</i> mat- rem eandem habuerint			} <i>omitted</i>	
16. item extent	idem (<i>index</i>) extent	existant et		extent et (<i>Gaius</i> , <i>Verone- se, Hus.</i>), extant et (<i>Just. Inst.</i>) duo (<i>Gaius</i>)
17. [duo] tres	<i>omitted</i> ires	<i>omitted</i>	<i>omitted</i>	
17-18. [ad unum <i>till</i> tres aut , quattuor]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	ad unam <i>till</i> tres aut quattuor (<i>Gaius</i>)
19. altera dimidia	dimidiam	alteram dimidiam	dimidiam	
20. De agnatis				de agnatis (<i>omitted in Gaius</i>)
21. ex lege	et	et ex legem		
22. legitima cognitione iuncti	uincti	legitimam cognitionem		

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 136— <i>cont.</i>				
23. est per uirilis sexus personas	hoc est uirili sexu persona	hoc est ex uirili sexu personae	hoc est uirilu sexu	est ea (<i>Gaius</i>), haec est (<i>Hus.</i>) persona (<i>Gaius</i> , <i>Veronese</i>)
24. coniungitur [qui]	<i>omitted</i>	coniunguntur <i>omitted</i>	<i>omitted</i>	<i>omitted in Just. Inst.</i> III, 2, 1; <i>who also</i> <i>omits the first sunt in</i> <i>the line. In Gaius</i> <i>the passage (III. 10) is</i> <i>defective.</i>
patre sunt	pater	sunt <i>omitted</i>		
25. sibi an	uisi	uisi	uisi	sibi (<i>Just. Inst.</i>) an etiam (<i>Hus.</i>)
26. matrem eandem	matre eadem	matre eadem	matre eadem	
habuerint		habuerunt		
27. item fratris inuicem is	idem (<i>index</i>) inuice his	patris		
28. eodem fratres patruales		eorum patruelis	fratris patruelis	
29. quos plerique etiam conso- brinos	quos plerique etiam conso- prinos		} <i>omitted</i>	
30. ratione ad gradus agnationis	agnitionis	rationem et gradus agnitionis		agnationis (<i>Gaius</i>)
31. poterimus simul	potuerimus		praeterimus <i>omitted</i>	
32. tum cum	tunc	tunc	tunc	tum cum (<i>Gaius</i>), tunc cum (<i>Hus.</i>)
33. intestatum	intestato	intestato	intestato	intestatum (<i>Gaius</i> , <i>Just. Inst.</i>)
decessisse	decessisset	discessisset	decessisset	
34. iure		iuro		
34-35. heredita- tem proxi- mus omiserit	heredes proxi- mos omiserint	heredem proxi- mo suo miserit	heredem proxi- mos omiserit	agnatus proximus here- ditaten omiserit (<i>Gaius, Hus.</i>)
35. hereditatem				<i>omitted in Gaius</i> , and (<i>Just. Inst.</i>)
decesserit		et decesserit		
36-37. quis proxi- mus erit, re- quirimus, sed eo tempore, quo	} <i>omitted</i>			fuerit <i>instead of erit is</i> <i>required (Mom.)</i>
38. aliquem intestatum quia facto		in testamentum quam	alique in testamentu quam factum	fuerit (<i>Hus.</i>) quia (<i>Gaius</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 136— <i>cont.</i>				
39. esse uisum est tunc	uisus	<i>omitted</i> ¹		u. e. (ex iis qui) tunc (sunt) (<i>Hus.</i>)
requiri proximum		requirit	proximum est	
40. [eo] heredem fore	<i>omitted</i> heredes forte		<i>omitted</i> heredum forte	eo (<i>Gaius</i>) fore heredem (<i>Gaius</i>)
PAGE 138.				
1. quod tamen adinet hoc iure	qui <i>omitted</i>	quedam adinet iuro	quid	quod (<i>Gaius</i>) attinet in (<i>Hus.</i>) in hoc (<i>Gaius</i>)
2. placet ceterorum				placuit (<i>Gaius, Hus.</i>) ceterorum bonis (<i>Gaius, Veronese Codex</i>)
ab		ad		
3. nam proinde atque	nam et	nam et deinde	nam et	nam (<i>Gaius</i>) proinde ad nos (<i>Gaius, Hus.</i>)
4-5. nostrae uero heredi- tates ad fe- minas ultra consanguini- eorum	adq; nostrae uero hereditates ad feminas ultra consanguinei eorum		} <i>omitted</i>	
5. fratri sororiue		fratris sorori uel		fratris sorori uel
6. filia heres				filia legitima (<i>Hus.</i>) legitima heres (<i>Gaius</i>)
7. sororis autem nobis loco	sorores au nob	locum manu		
8. manum apud ius nancta	apud cuncta	iuncta	cuncta	iure (<i>Gaius</i>) nancta (<i>Gaius, Ver.?</i>) consecuta (<i>Hus.</i>) ei qui (<i>Gaius</i>) si or st (<i>Gaius, Ver.</i>)
10. [ei] qui sit	quis si sit	quis si sit	quis si sit	
11. superioribus frater potior quia gradu	uperioribus pocior	<i>omitted</i> potior gradum facta	portior qui ad gradum facta	prior (<i>Gaius, Ver. C.</i>) facta est (<i>Gaius</i>) *
12. facta est suos	faciat uos exstet			
13. extet				
15. numero sint forte nati ex		n. s. f. aati ex		forte numero sint nati ut ex (<i>Gaius</i>); f. n. s. n. uelut ex (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 138— <i>cont.</i>				
15. et aut		aut		<i>omitted</i> (<i>Gaius</i>) uel (<i>Gaius</i> , <i>Hus.</i>)
16. stirpes suos	uos	stirpe		
17. heredes an	<i>omitted</i> aū	heredum		
autem				tamen (<i>Gaius</i> , <i>Hus.</i>)
18. diuidendam quotquot	quodquod dederunt		quod erunt	diuidendam esse (<i>Gaius</i> , <i>Hus.</i>)
erunt				
19-20. hereditas diuidetur et singuli sin- gulas por- tiones ferunt	<i>omitted</i> fuerunt	hereditas diui- ditur etsinguli singulas por- tiones		hereditas diuidetur ita ut singuli singulas portiones ferant (<i>Gaius</i> , <i>Hus.</i>)
21. uocat sint	(a.) sunt	fecerunt uocant		uocant (<i>Gaius</i> <i>Veron.</i>)
22. gentiles comen- tario retuli- mus et	comentariorum et ultimum est	gentilis commentario respondit et ultimum est	commentario et ultimum est	commentario retulimus et (<i>Gaius</i>)
23. admonueri- mus gentilicium desuetudinem	admouerimus		admoueremus	totum gentilicium (<i>Gaius</i> , <i>Hus.</i>)
abisse			de suae consue- tudine habuisse	abiisse (<i>Hus.</i>) eadem (<i>Gaius</i>)
24. ea tractare		intractare		
25. Paulus libro sententiarum iiii sub titulo	paulus liber sententiarum vii (vii sententia- rum <i>index</i>) sub titulo	<i>omitted</i>	<i>omitted</i>	
25-26. de intesta- torum suc- cessionibus	de testamento- rum succes- sionibus	de intestato- rum succes- sionibus	de intestorum successionibus	
27. dicuntur testamentum facere non possunt		testamento		[et hi] dicuntur (<i>Hus.</i>) f. n. possent (<i>Hus.</i>)
27-28. [uel iure non fecerunt cum possent]	<i>omitted</i>		<i>omitted</i>	<i>added by Mom.</i>
28. decederent		dicere	dicerent	
PAGE 140.				
1. quorum quibusue	hii quorum cuius nec	hic eorum cuiusue	hic quorum cuius uel	hi quorum (<i>Hus.</i>) quibusue (<i>Mom.</i>); here- disue (<i>Hus.</i>) who adds [quiue capite minuti fuerint]
2. nisi [non iure]	sine <i>omitted</i>	sine <i>omitted</i>	sine <i>omitted</i>	sane (<i>Cujas</i>) nisi (<i>Hus.</i>); [non iure] <i>added by</i> <i>Mom.</i> facto (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 140— <i>cont.</i>				
2. testamentum				testamento (<i>Hus.</i>)
3. obiecta exceptione optinebit	abiecta expectatione	abiecta expectationem	abiecta expectatione	obtenebitur (<i>Hus.</i>)
3-4. horum quo- rum testa- menta rum- puntur	eorum qu. t. r.	eorum qu. t. rumponuntur	eorum qu. t. rumponuntur	h. qu. (<i>Mom.</i>), ii quorum tes. (a postu- mo) r. (<i>Hus.</i>)
4. inrita ipso	inuita	inuita	inuita	(ut inopia) inrita (<i>Hus.</i>) ipsi. (<i>Hus.</i>). (<i>He had also conjectured in Zeitschrift für Gesch. R. W. xiii. p. 46, initio</i>)
quidem testati	testamenti	quoque		testamenti (<i>Hus.</i>)
5. sed per con- sequentias <i>till</i> decedunt decedunt	<i>omitted</i>		sed per conse- quentia. . . . decedunt	redduntur (<i>Hus.</i>)
7. heredibus deinde	hereditatibus			deinde (consanguineis) et (<i>Hus.</i>)
et		est	est et	<i>Mom. thinks et should be deleted</i>
quoque gentilibus	gentibus	enim gentibus	gentibus	
8. consanguinei quos	consanguineis	consanguineis	consanguineis	consanguinei quos (<i>Cujas</i>) ; consangui- neos (<i>Hus.</i>) (aperte) adp. (<i>Hus.</i>)
adprehen- derat		adprehenderet		(at) interp. (<i>Hus.</i>)
9. interpreta- tione	interpreta- tionem	interpretatio- nem		
locum	loco			
10. acceperunt sui primo potestate	hoc primo	accoeperint sibi hoc primum potestatem	suis hoc primo potestatem	hi primo (<i>Hus.</i>)
11. si an et		eos	tam eos	<i>correctly deleted by the editors (Mom.)</i> sed (<i>Hus.</i>)
12. Iuliam Papiamue quesiti	iulia pipiamuae quesiti	papianum ex- quisiti	papiam uel quesiti	papiam que (<i>Hus.</i>)
13. potestate heredes heredes		potestatem	heredem heredem	
14. et		ex	ex	
15. possessio nisi	possessionis	possessiones	possessionis	possessio nisi (<i>Vangerow</i>)
16. erat necessaria suis a morte	necessariam sui ad mortem	a mortem	sui	erit nec. (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 140— <i>cont.</i>				
17. heredita- riarum continuatur	hereditariorum	hereditari- orum (?)	hereditariorum <i>after</i> continu- atur <i>the word</i> idem (<i>begin-</i> <i>ning a chapter</i>	
nec			ne	
18. pupillis	pupillo		pupillum	furioso (<i>Hus.</i>)
furiosis				
curator	curatur			
necessarius			(<i>a.</i>) necessariis	nec si (<i>Hus.</i>)
nisi				ut abstineant si m. fort.
18-19. [ut absti- neant, si minus forte]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	(<i>Krueger</i>), (<i>Hus.</i>)
19. soluendo	soluenda	uoluenda	soluenda	<i>omits</i>
sit				(non) sit (<i>Pith.</i> , <i>Hus.</i>)
19-20. etiam fu- riosus		(<i>a.</i>) furiosius		et furiosus (<i>Hus.</i>)
20. resipuerit	resipierit		resipierit	
pupillus			in pupillum	
adoleuerit		adheleuerit		
possint			possit	
21. patris	patri		patri	
PAGE 142.				
1. secundoque			secundum uel	
manumissus		manum missus	manum missus	
cuiusue			cuius uel	
2. [est]	<i>omitted</i>	<i>omitted</i>	<i>omitted</i>	<i>added by Krueger</i>
fuerint		fuerit	fuerit	
3. ad		ab		
4. ueniunt	ueniant	ueniant	ueniant	
proneptes	neptes proneptes	<i>omitted</i>		
ac	hac	aut		
5. masculino			masculinu	
sexu	sexum		sexum	
per	post	post	post	per (<i>Rittershusius</i>)
nullo	nullum	nullo	nullo	
parentum			parentium	
6. inpedimento			inpedimentum	
potestate		potestatem		
familia	famili	familia	familia	<i>might be deleted.</i>
remanserint	remanserit	permanere	remanserit	(<i>Mom.</i>)
7. fuerint	fuerunt	fuerit	fuerint	fuerunt (<i>Hus.</i>)
8. ordine	ordinem	ordinem		
successionis		successionem	successiones	
obsistunt		constituunt	obstituunt	
fili si	filius	filius	filius	filius (<i>Hus.</i>)
9. in familia	infamia			retinetur (<i>Hus.</i>)
retinentur				
ad intestati	ab intestato			
patris			patri	
10. filius			filius	
uocantur		uocatur	uocatur	uocatur (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word,	Berlin.	Vienna.	Vercelli.	Other Readings .
PAGE 142— <i>cont.</i>				
10. quibus partem	in quibus parentem	parentes	parentes	
11. in stirpes non diuiditur ita	in styrrpes non diuiduntur		<i>omitted</i> diuiduntur item (<i>beginning of a new chap- ter</i>)	
unus et	<i>omitted</i> ex	ex	ex	
12. semisses idemque	idque	idque	semisse idque	idemque (<i>Pith.</i>)
13. auo inpari successerint	ab eo in patrum	ab eo in patrum successerunt	ab eo in patrum	auo <i>editors</i> inpari (<i>Hus.</i>)
14. heredes aui materni potestate	auiae	materna potestatem	heredem potestatem	
15. ratione	rationem	rationes		
16. heres constituen- dus	constituendos		heredes	
quo		quod		
17. decessisse euentu	decessisset		euentum	secundum quod ex euentu (<i>Hus.</i>)
17-18. et ortu nepotis	et hortum nep.	et certum nep.	et ortum nep.	nepos is (<i>Hus.</i>)
18. auo				auo conceptus (<i>Hus.</i>)
18-19. [conceptus aui]				<i>Added by Mom. (cf. Inst. III., 1. 8)</i>
19. finiri quem	iniri cum	siniri cuius	siniri idem cum (<i>be- ginning a new chapter</i>)	est suus fieri (<i>Hus.</i>)
emancipatus	et mancipatus	et emancipatum		
20. adoptauit sui heredis successione		adoptiui heredes successionem	suis heredes	
21. [potest] adoptiuus			adoptiuum	<i>added by Mom.</i>
21-22. nec quasi	ne quasi	ne quasi	neque si	ne quasi (<i>Hus.</i>)
22. possessionem petere potest si	possessionum potire	possessionum	possessionum	
23. agnatos pertinebit		potens agnatum		
25. cognati uirilis [sexum]	cognatis <i>omitted</i>	uirili <i>omitted</i>	pertineri <i>Here the Vercelli Codex ends.</i>	descendentes sexum (<i>Hus.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 144— <i>cont.</i>				
1. [quod] etiam	<i>omitted</i> enim etiam	<i>omitted</i> etiam		quod (<i>Paul.</i>) etiam (<i>Paul.</i>)
2. cognatos	agnatos	agnatos		
3. agnatus auunculus	abunculus			et agnatus (<i>Paul.</i> , <i>Hus.</i>)
4. tantum modo est patre	tantum modum patrem	t. modo		<i>omitted in Paulus</i>
5. qui in potes- tate fuerunt		quibus in potes- tate fuerunt		
7. patris causam probauerunt	patri causa	causa probueraint		
8. consanguini- tatis		sanguinitatis		
9. agnatis defer- tur		agentis differtur		
10. gradu	gradum	gradum		
11. eodem gradu	eodem gradum	eosdem grados		
11-12. si sint de- functi fratris et filius et nepos	si sit frater defuncti et fratri filius et nepus	si sit frater defuncti et fratris filius et nepos		si sint fratres defuncti et fratres filii et nepotes. <i>Paul.</i> , <i>a-</i> <i>cording to Kürger</i> <i>emendation.</i> si sint fratre defuncto, fratris filius, et nepos eius ex (<i>Hus.</i>)
12. fratre existente	fratres et existentes	existentem		
13. praeferitur	perfertur			
14. numero		numerus		
15. iurium distribuitur	iurium	iuri distribuitur		
16. consanguineorum admittuntur id quod	consanguineas admittantur id quod	consanguineos amittantur hi quod		consanguineorum (<i>Hus.</i>) idque (<i>Paul.</i> , <i>Hus.</i>) uoconia narratione (<i>Paul.</i>)
17. Voconiana ratione	uoconia rationem	coniurationem		uoconia narratione (<i>Paul.</i>)
18. sine ulla discretionem sexus admittit	discrepationes ex his cognatos ad- mittit	disceputationem sexus cognatis admittit		discretionem sexus (<i>Paul.</i>) <i>Mom. deletes cognatos</i> discretionem (femininum sexus agnatos admittit (<i>Hus.</i>) Ulp. lib. regularum singularium s. t. (<i>Hus.</i>)
19. Ulpianus libro singulari regularum] sub titulo	ulpianus libro singulari sub titulo	} <i>omitted</i>		
20. hereditatibus				hereditibus (<i>Ulp.</i>)
21. ingenuorum	gentiliciorum	gentiliciorum	gentiliciorum	ingenuorum (<i>Ulp.</i> , <i>Hus.</i>) gentiliciorum (<i>Mom.</i>)

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 144— <i>cont.</i>				
23. liberorum	liberorum	in liberorum		in liberorum (<i>Codex of Ulp.</i>)
non sunt	non sint	non sint		non sunt (<i>Ulp.</i>), non sint (<i>Hus.</i>)
24. et patre sunt	patrem	aut		sint (<i>Hus.</i>)
25. [proximos id est cognatos] uirilis	{ omitted	{ omitted		proximos id est cognatos (<i>Blume from Ulp.</i>)
26. mares eiusdem id lege	matres eisdem his legem	matres		
27. intestatus cui suus	cuius	cuius		intestato (<i>Ulp.</i>) cui suus (<i>Ulp.</i>)
28. escit familiam habeto	est familia habeatur	est habeatur		familiae (<i>Ulp.</i>) habeto (<i>Ulp.</i>)
29. eadem	eamdem	eamdem		
PAGE 146.				
1. uocat si agnatus nec escit	uocant signatus nescit	uocantur sic natus nescit		si agnatus (<i>Pith.</i>) nec, with a blank space (<i>Ulp. Codex</i>)
familiam		familias		
2. [habento nunc nec ullus est] heres hinc	{ omitted hanc	{ omitted hanc		Added by Mom. habento nunc (nec gen- tiles) (<i>Hus.</i>) omitted by <i>Hus.</i>
3. usu sunt		usui est		
5. idem [libro] institutionum.....[sub titulo de successioni- bus] ab in- testato	{ item (idem in- dex) ab in- testatio insti- tutionum	idem ab intes- tato institu- tionum		idem libro inst. (secundo s. t. d. s.) ab intestato (<i>Hus.</i>)
6. ab defertur		ad differtur		
8. fuerunt [qui sunt]	omitted	fuerint		Added by Mom.
9. quia nati sunt succedunt	qui	qui succedunt		quia (<i>Mom.</i>) natus sit (<i>Hus.</i>)
10. idem libro	item liber (<i>index</i>)			

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 146 — <i>cont.</i>				
11. post suos	post suos (<i>text</i>) postumos (<i>index</i>)	post tuos ¹ post duos ²		
intestato	intestos (<i>index</i>)	legitim(a)e		
legitimi	legitim(a)e	legitim(a)e		
primum		primi		
12. [consan- guinei]	<i>omitted</i>	<i>omitted</i>		<i>added by Lenel Palin</i> <i>gen. Ulp. fr. 1926</i>
12. frater et so- ror	fratres et soror			fratres et sorores (<i>Hus.</i>)
eiusdem	eisdem			
13. potestate	potestatem	potestatem		
patris	patres			
fuerunt		fuerint		
14. [et]	<i>omitted</i>	<i>omitted</i>		<i>Added by Mom.</i>
15. manum	manu			
16. idem	item			
libro		liber		
17. de[ficien- bus] consan- guineis	deconsan- guineis (<i>index</i>) et consan- guineis (<i>text</i>)	{ et consanguinei		deficientibus consan- guineis <i>Mom. on the</i> <i>authority of Ulpian</i> <i>Dig. xxxvii., 2, 2 pr</i> post consanguineo admittuntur agnati, s consanguinei non sunt merito: nam si sunt consanguinei, licet no adierint hereditatem legitimis non defertur <i>Hus. has post consan</i> guineos
18. nos		non		
uirilis	uiris	uirili		
19. consanguini- neas	(a.) consanguineis			
20. praetor		praetor		
solet		<i>omitted</i>		
emancipatos	et emancipatus			
21. ciuitate	ciuitatem	ciuitatem		
donatos	donatus	donatus		
possessione	possessiones	possessiones		
		<i>Here ends the</i> <i>Vienna Codex.</i>		
ita tamen	hi tamen			sic tamen (<i>Hus.</i>)
22. si	sit			
23. conferant	conferat			
24. quod	qui			quod (<i>Boecking</i>)
praecipua	precipuam			
bona	bonam			

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 146— <i>cont.</i>				
25. ablaturi suis heredibus	ablaturis suis hoc redibus			
26. idem libro [sub titulo] de suis	idem liber (<i>index</i>) <i>omitted</i>			d. s. (et legitimis) (<i>Hus.</i>)
PAGE 148.				
2. patrono	patronum			
3. patronaeue lege defertur	patronauae legem refertur			
6. item liberos	idem liber (<i>index</i>)			
7. cognatos	cognatus			
8. liber [nec] remancipa- tione	libero <i>omitted</i> remacipationem			<i>added by Mom.</i> (mancipatione citra re- mancipationem) (<i>Hus.</i>)
9. manumissori legitimam	manumissoris legitima			
11. auum	aiuum			
12. nepotem occasione	nepote occansionem			
15. inmunitatem	immunitate			

LISTS OF THE TITLES,
THE SUPERSCRPTIONS AND
SUBSCRIPTIONS, AND OF
THE CHAPTERS.

TITLES.

In Pithou's Edition.

- I. De sicariis et homicidis casu uel
noluntate.
- II. De atroci iniuria.
- III. De iure et saeuitia dominorum
cohibenda.
- IIII. De adulteris.
- V. De stupratoribus.
- VI. De incestis.
- VII. De furibus et poena eorum.
- VIII. De falso testimonio.
- VIIII. De familiari testimonio non
admittendo.
- X. De deposito.
- XI. De abigeis.
- XII. De incendiariis.
- XIII. De termino moto.
- XIV. De plagiariis.
- XV. De mathematicis, maleficis et
Manichaeis.
- XVI. De legitima successione.

In Scaliger's Apograph. (from Blume's Edition.)

- I. De sicariis.
- II. De atroci iniuria.
- III. De iure et saeuita dominorum
cohibenda.
- IIII. De adulteriis, stupratoribus, et
incestis.
- V. De furibus et poena eorum.
- VI. De falso testimonio.
- VII. De deposito.
- VIII. De abigeis.
- VIIII. De incendiariis.
- X. De termino moto.
- XI. De plagiariis.
- XII. De mathematicis, maleficis et
Manicheis.
- XIII. De legitima successione.

SUPERSCRPTIONS AND SUBSCRIPTIONS OF TITLES IN THE MSS.

BERLIN.	VIENNA.	VERCELLI
Incipit capitulum legis dei, <i>followed by index of the chapters and Julian with the additions.</i>	Incipit legem dei quod preceperit dominus ad moysen, <i>followed by index of the chapters.</i>	Incipit capitula legis quod preceperit deus ad moysen, <i>followed by index of the chapters, and Julian with the additions.</i>
Incipit lex dei quam deus precepit ad moysen. <i>Then follows the text without subscription to the book.</i>	Explicit kap. Incipit liber primus. <i>Then follows the text ending xvi. 7, 2, with the words bonorum possessiones explicat; also the 4th title has the prescription constitut. iiii. de legem moysi.</i>	Incipit legem dei quod precepit dominus ad moysen. <i>Then follows the text ending xvi. 3, 13, with the words heredibus pertinere. There is no subscription to the book.</i>
Title I., 4, <i>at the end</i> : item (idem, <i>index</i>) de causalibus homicidiis.*	item de causalibus homicidiis.*	item de causalibus homicidiis.*
Title I. 5, <i>end</i> : Explic. titulus de sicariis et homicidis casu uel uoluntate. Incip. de atroci inturia (<i>sic</i>).	explic. de sicariis. incip. de atrociniis iniuriis.	explic. titulo de sicariis et homicidiis. <i>omitted.</i>
Title II. <i>end</i> : Explicit de atrociis iniuriarum kp. iii. cons. (<i>in black and then in red</i> , kp. dcxvi.) Incipit de iure et sebitia (sed uitia, <i>index</i>) dominorum.	explicit de atrociis iniuriarum. incipit de iure et seuitia dominorum constit. tituli iii.	<i>omitted.</i> incipit de iure et saeuitia dominorum.
Title III. <i>end</i> : Expl. titulo de dominorum seuitia cohibenda cons. iiii. Incip. de adulterio.	expl. de dominorum seuitia. incip. de adulteriis constitut. iiii. de legem moysi.	expl. titulo de dominorum seuitia. incip. de adulteriis.

* This is the prescription to Chapter 5.

SUPERSCRPTIONS AND SUBSCRIPTIONS OF TITLES.

BERLIN.	VIENNA.	VERCELLI.
Title IV. <i>end</i> : Expl. titulo quinto. Incip. de stupratoribus.	explicit de adulteris. incip. de stupratoribus.	expl. cap. quod supra. incip. de strupatribus.
Title V. <i>end</i> : Expl. titulo de stupratoribus. Incip. de incestis (ingestas, <i>index</i>) nuptiis.	expl. de stupratoribus. incip. de incestis nuptiis.	<i>omitted.</i> incip. de incestis nuptiis.
Title VI. <i>end</i> : Expl. titulo de adulteris stupratoribus et incestis. Incip. de furibus et de poena eorum.	<i>omitted.</i> incip. de furibus et de penis eorum.	<i>omitted.</i> incip. de furibus et de paene eorum.
Title VII. <i>end</i> : Expl. titulus de furibus. Incipit de falso testimonio.	expl. de furibus. incipit de falso testimonio.	<i>omitted.</i> item de falso testimonio.
Title VIII. <i>end</i> ; viii.	<i>omitted.</i>	<i>omitted.</i>
Title IX. <i>end</i> : Expl. titulus de familiariis testimonium non admit- tendo decimo. Incipit de deposito.	explicit de falso testimonio. incipit de deposito.	expl. titulo de testimonia. incipit de deposito [x de de- posito Codex Bellovacensis.]
Title X. <i>end</i> : Expl. titulo de deposito unde. Incipit de abegeatoribus (ab- batoribus, <i>index</i>).	explicit de depositis. incipit de abactoribus.	<i>omitted.</i> incipit de actoribus.
Title XI. <i>end</i> : Expl. de abigeis de incendiariis XII. (Incipit de incendiariis, <i>index</i>)	expl. de abactoribus. incipit de incendiariis.	<i>omitted.</i> incipit de incendiariis duodecim
Title XII. <i>end</i> : Expl. titulo de incendiariis. Incip. de terminia mota XIII. (mota <i>omitted in index</i>).	expl. de incendiis. incipit de termino amoto.	<i>omitted.</i> item de termino amoto.

SUPERSCRPTIONS AND SUBSCRIPTIONS OF TITLES.

BERLIN.	VIENNA.	VERCELLI.
Title XIII. end : Expl. titulus de terminea mota. Incip. de plagiariis xiii.	explicit de termino amoto. incipit de plagiariis.	<i>omitted.</i> item de plagiariis.
Title XIV. end : Expl. titul. Incip. xii. de mathematicis et manicheis.	explicit de plagiariis. incip. de mathematicis.	<i>omitted.</i> de mathematicis et manicheis.
Title XV. end : Expl. titulus de mathematicis maleficis et manicheis. Incip. titulus xii de legitima successione.	explicit de mathematicis. incip. de legitimas actiones.	<i>omitted.</i> item de legitima actione.
Title XVI. : <i>No subscription.</i>		

LISTS OF CHAPTERS IN THE CODICES.

BERLIN CODEX.	VIENNA CODEX.	VERCELLI CODEX.
(Fol. 17, line 11.)	(Fol. 162b, col. 2, at the end.)	(Fol. 6b, col. 2, line 22.)
Incipit Capitulu[m] Legis Di.	Incipit Legem Di Quod Precepit Dñs ad Moysen. (Fol. 163a, col. 1.)	Incipit Capitula Legis Quod Precepit Ds ad Moysen. Moyses Di Sacerdus Hec Dicit.
Kp. DXCIH. Paulus quoque libro quinto sententiarum.	I. Moyses sacerdos dicit.	Kp. I. Si quis p[er]cusserit homi[n]e[m] ferro.
Kp. DXCIH. Ulpianus libro septimo de officio p[ro]consuli.	II. Ad legem cornelianam de sicariis et beneficiis dicit.	Kp. II. Paulus quoque Libr V. sententiaru[m] sub tit ad le- (Fol. 7a, col. 1.)
Kp. DXCV. Relatis uerbis legis modo ipse loquitur.	III. Ulpianus liber VII. de officio p[ro]consulis sub titulis de sicariis et beneficiis.	gem corneliã, Kp. III. De officio p[ro]consulis, Kp. IIH.
	IIII. Relatis uerbis legis modo ipse loquitur.	Quicuq[ue], cu[m] telo ambulauerit.
Kp. DXCVI. Idem paulus libro quod supra et titulu[m] dicit.	V. Itẽ paulus libro quo supra, et titulo dicit.	Kp. V. Idẽ paulus libro quod supra et titulo. Kp. VI.
Kp. DXCVII. Idem de causalibus homicidis.		
Kp. DXCVIII. ulpianus libro et titulo	VI. Ulpianus lib et titulo qui supra.	Ulpianus libro et titulo qui supra.
Kp. DXCVIII. uerba rescripti, et qui hominẽ cađ.	VII. Verba rescriptis.	Kp. VII. Verba rescripti qui hominẽ occidit. Absoluti solet.
Kp. DC. paulus libro tertio quinto titulo quod sup.	VIII. Paulus liber tertius titulu[m] qui supra.	Kp. VIII. Paulus lib tertio quinto tit quod supra.
Kp. DCI. Idem gregorianus libros quarto ad lege cor.	VIII. Item gregorianus liber IIII. Ad legẽ corneliã de sicariis et beneficiis.	
Kp. DCII. Idem gregorianus eodem et titulo et libro talem constitutionem ponit.	X. Item gregorianus in eodẽ titulu[m].	Kp. IX. Idem. Kp. X. Idẽ gregorianus eodem lib et titulo.
Kp. DCIII. Idem gregorianus eodem libro et titulo	XI. Itẽ gregorianus in eodẽ lib. titulu[m].	Kp. XI. Idem, Kp. XII. Idem.
Kp. DCIII. Ulpianus libro et titulo quod supra.	XII. Ulpianus liber et titulus qui supra.	
Kp. DCV. Uerba consultationis et rescripti ita se habentem inter clodium optime imp.	XIII. Verba consultationis et rescripti.	Kp. XIII. Imp. euaristus cognoui quod claudius luppi filius in conuino Kp. XIII.

LIST OF CHAPTERS IN THE CODICES.

BERLIN CODEX.	VIENNA CODEX.	VERCELLI CODEX.
Kp. DCVI. Verba rescripti poenā mariębaristi	XIII. De scientibus et ignorantibus generaliter loquitur.	Verba rescripti Kp. XV. De scientibus et (sic) ignorantib; generaliter loquitur.
Kp. DCVII. Modestinus libro differentiarum sexto sub titulo.	XV. Paulus libro et titulo qui supra. Explicit de sicariis et Homicidiis Causa. Vel uoluntatem.	Kp. XVI. Idē, Kp. XVII. Incipit.
Kp. DCVIII. Paulus libro et titulo quod supra.	Incipit De Atrociis In Iniuriis (sic.) (col. 2.)	.
Kp. DCVIII. Moyses dicit si autem duo.	XVI. Moyses dicit.	De iniuriis Moyses dicit
Kp. DCX. Ulpianus libro regulari sub titulo de iuriis.	XVII. Ulpianus libro singulari sub titulo.	Kp. XVIII. Idem de iniuriis.
Kp. DCXI. Papianus libro definitiorum.	XVIII. Papinianus libro definiorū secundo sub titulo.	Kp. XVIII. De iudicatis psonis p hominū liberorū, Kp. XX.
Kp. DCXII. Ulpianus libro xviii. ad edictum.	XVIII. Ulpianus libro XVIII. Ad edictum sub titulo.	Si fateuitur iniuriam Kp. XXI.
Kp. DCXIII. Paulus libro singulari et titulo.	XX. Paulus libro singulari sub titulari.	Idē de iniuriis, Kp. XXII.
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* Note the errors in numbering in the Berlin Codex.

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[A passage from the *Collatio* (v. 3) is found in mutilated form in the *Theodosian Code* (ix. 7, 6).]

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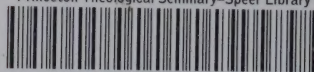
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